

Governance and Ethics Committee

Thursday, 21 July 2022 at 14:00

County Hall, West Bridgford, Nottingham, NG2 7QP

AGENDA

- | | | |
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| 1 | Minutes of last meeting held on 9 June 2022 | 3 - 6 |
| 2 | Apologies for Absence | |
| 3 | Declarations of Interests by Members and Officers:- (see note below)
(a) Disclosable Pecuniary Interests
(b) Private Interests (pecuniary and non-pecuniary) | |
| 4 | Update on Local Government and Social Care Ombudsman decisions | 7 - 38 |
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| 6 | Internal Audit Term 3 Progress Report & Term 2 Plan 2022-23 | 51 - 62 |
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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 Jo Toomey (Tel. 0115 977 4506) or a colleague in Democratic Services prior to the meeting.

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



Meeting GOVERNANCE AND ETHICS COMMITTEE

Date Thursday 9 June 2022 (commencing at 2.00 pm)

membership

COUNCILLORS

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

Richard Butler - Apologies
Bethan Eddy
Errol Henry JP
Andy Meakin
Michael Payne - Apologies

Sue Saddington
Helen-Ann Smith
Roger Upton
Daniel Williamson

SUBSTITUTE MEMBERS

Councillor Pauline Allan for Councillor Michael Payne
Councillor Chris Barnfather for Councillor Richard Butler

OFFICERS IN ATTENDANCE

Heather Dickinson Chief Executive's Department
Richard Elston
Catherine Haywood
Simon Lacey
Keith Palframan
Jo Toomey
Marjorie Toward

Sue Batty Adult Social Care and Health

EXTERNAL AUDIT

Andrew Smith Grant Thornton

1. TO NOTE THE APPOINTMENT BY FULL COUNCIL ON 12 MAY 2022 OF COUNCILLOR PHILIP OWEN AS CHAIRMAN AND COUNCILLOR JOHN LEE AS VICE-CHAIRMAN OF THE COMMITTEE FOR THE 2022-23 MUNICIPAL YEAR

The appointment by Council of Councillor Philip Owen as Chairman and Councillor John Lee as Vice-Chairman for the 2022-23 municipal year was noted.

2. TO NOTE THE MEMBERSHIP OF THE COMMITTEE FOR THE 2022-23 MUNICIPAL YEAR AS FOLLOWS: COUNCILLOR PHILIP OWEN, JOHN LEE

LEE, RICHARD BUTLER, BETHAN EDDY, ERROL HENRY JP, ANDY MEAKIN, MICHAEL PAYNE, SUE SADDINGTON, HELEN-ANN SMITH, ROGER UPTON AND DANIEL WILLIAMSON

The membership of the Committee was noted.

3. MINUTES

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

4. APOLOGIES FOR ABSENCE

Apologies for absence were received from:

- Councillor Payne (other County Council business)
- Councillor Butler (other reasons)

5. DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

None.

6. UPDATE ON LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN DECISIONS (APRIL 2022 TO MAY 2022)

RESOLVED: 2022/022

That the findings of the Local Government and Social Care Ombudsman be noted.

7. EXTERNAL AUDIT PLAN 2021-22

During discussion of the External Auditor's Audit Plan for 2021-22, Members asked about infrastructure assets, their depreciation and their presentation on the balance sheet.

RESOLVED: 2022/023

That the External Auditor's Audit Plan for 2021-22 be noted.

8. ASSURANCE MAPPING ANNUAL REPORT 2020-21

RESOLVED: 2022/024

- 1) That the assurance mapping process be retained in 2022/23.
- 2) That the scope of the assurance map for 2022/23 be consolidated to focus on the existing eight assurance areas.

- 3) That progress against proposed actions to address the issues identified be reported to Committee as part of quarterly update reports on the Annual Governance Statement.

9. INTERIM CHIEF INTERNAL AUDITOR'S ANNUAL REPORT 2021/22

RESOLVED: 2022/025

- 1) That the contents of the Interim Chief Internal Auditor's report for 2021/22 be noted.
- 2) That a further report be brought to the Committee in 12-months time.

10. FOLLOW-UP OF INTERNAL AUDIT RECOMMENDATIONS – 6-MONTHLY UPDATE

RESOLVED: 2022/066

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

11. REVIEW OF PETITIONS SCHEME

Members discussed the review of the Council's Petitions Scheme, which has been amended to reflect the revised governance arrangements. A suggestion was made, which was taken on board by the cross party governance review working group, that further revisions to the Petition Scheme be considered including identification of trigger points at which petitions would be referred to scrutiny and full Council.

RESOLVED: 2022/027

That the amendments to the Petitions Scheme be approved.

12. UPDATE ON THE USE OF THE COUNCILLOR'S DIVISIONAL FUND

The report set out how the Councillors Divisional Fund had been used in the 2021/22 financial year. Members of the Committee asked for information on the proportion of the budget that was used and how much was returned to corporate balances.

RESOLVED: 2022/028

- 1) That the CDF expenditure for the period 1 April 2021 to 31 March 2022 detailed in Appendix A to the report be noted.

- 2) That the need to use and fully complete the new CDF applications forms, in line with the revised policy from 6 June onwards be noted and after which the use of the old forms would not be accepted.
- 3) That once the test site is ready, Committee members be sent a link to enable them to access and test the pilot system and help inform its development.

13. BASSETLAW COMMUNITY GOVERNANCE REVIEW – STAGE 2

RESOLVED: 2022/029

That the Chief Executive be authorised to submit the response attached as Appendix A to the report to Bassetlaw District Council as Nottinghamshire County Council's response to the consultation on the final draft proposals of its Community Governance Review.

14. WORK PROGRAMME

RESOLVED: 2022/030

That the work programme be agreed.

The meeting closed at 2.23 pm.

CHAIRMAN

21 July 2022**Agenda Item: 4****REPORT OF THE SERVICE DIRECTOR FOR CUSTOMERS, GOVERNANCE
AND EMPLOYEES****LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN DECISIONS
MAY 2022 TO JUNE 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

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 9th June 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 ten 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 seven cases, the LGSCO decided not to continue with any further investigation for the reasons given in Appendix A
7. Full investigations were undertaken into three complaints. 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 three complaints where fault was found. The first one is a Childrens complaint about the lack of support provided by the Council in respect of her son who has complex learning difficulties. The Council upheld Mrs Y's complaint and offered a remedy at the first stage of the statutory children's complaints procedure. When Mrs Y asked the Council to progress her complaint to the second stage of the complaints procedure the Council refused. This is fault. The Council has agreed to progress the complaint, apologise to Mrs Y and remind the relevant staff about the regulations and guidance. A clear communication has been delivered from management to the department emphasising a complainant's right to escalate their complaint and we must abide by their request regardless of whether we uphold their original complaint
9. The second one is in Adults Social Care. The complaint is about the Council's decision to assess that Mr C's mother, Mrs C, gave money and transferred a property to avoid paying care charges. Fault was found in the Council's decision where it concerns one transfer of money made by Mrs C several years ago. No fault was found in its consideration around later transfers made by Mrs C, including that of her home. The fault has created uncertainty about the outcome of the Council's assessment. A letter of apology and a reconsideration of the total assets and the cost of care is being arranged. The inclusion of the relevant assets has been reviewed with the outcome of a reduced notional capital amount. Mrs C has been informed of this and the fact that the amount of capital still means that the full cost of care needs to be paid. The Council's Adult Care Financial Services team (ACFS) has put in place improvements. It has developed further staff guidance and trained all it's staff on these which includes the need to ask full questions and verify facts. There have been no further complaints relating to deprivation of asset decisions since this was done. Further improvements in terms of information and communication will come from the current review underway on ACFS services and processes, which is currently at the diagnostic stage
10. The third complaint is Childrens. The complaint is about the Council not providing a suitable alternative education for the daughter when she was out of school. Although the Council was not aware initially that she was out of school, it was at fault for not checking the support in her Education Health and Support plan was in place, enabling her to return to school, and delays in identifying a new school when it became clear this was needed. As a result, she missed out on education from March 2020 to July 2021. A review of its processes and a financial remedy is to be made, one for the delay in the handling of the complaint and one to recognise the additional time Y was out of school and without a suitable education as a result of the Council's failings. This complaint relates to failures originating from December 2019. Since then, the service area has introduced a number of key improvements to minimise the likelihood that such failures could happen again. Firstly, an electronic EHC hub has been introduced which records the documentation relating to Annual Reviews. In addition, the hub which is essentially an electronic portal, stores securely all relevant documentation. Secondly, the service has created a role of 'Annual Review Service Organiser'. This role undertakes monitoring of Annual Reviews. Thirdly, the attendance of children and young people with EHCPs is now monitored more closely

Statutory and Policy Implications

11. 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

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

Financial Implications

13. The details of the financial payments are set out in Appendix A. £3600 will come from Children's Social Care budget and £300 from the Complaints Team

Implications for Service Users

14. 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

15. 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))

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

Financial Comments (SES 27/06/2022)

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

18. The details of the financial payments are set out in Appendix A. £3600 will come from the Children's Social Care budget and £300 from the Complaints Team.

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
09.06.2022	21016031	Corporate	Complaint that the Council will not remove the branches of a tree overhanging her driveway. She said bird droppings from the tree damages her car and affects her children, who have additional needs.	Investigation discontinued as the alleged injustice was not considered to be significant enough to warrant LGO involvement
11.05.2022	22001107	Corporate	The complainants, Mr and Mrs X, complain the Council has failed to take action against a retailer for operating a guarantee scheme which may be unlawful	LGSCO cannot investigate because they could not achieve any worthwhile outcome for them
26.05.2022	22001207	Adults	Complaint about charges for Mrs B's care being unfair in 2017	Cannot investigate issues which weren't raised within 12 months and there is no good reason to investigate in due course.
20.05.2022	22001244	Adults	Complaint about standard of Father's care in 2011	Cannot investigate issues which should have been raised within 12 months and act outside jurisdiction and no good grounds to investigate now
17.05.2022	22001330	Corporate	Complaint about damage to property by council owned hedge	Cannot achieve the outcome the complainant seeks through the process, better suited to the courts.
27.05.2022	22002191	Corporate	Complaint that the Council are storing and sharing false information and the Council deemed Ms T a risk to children	Cannot investigate whether information is accurate or not, Ms T advised to contact ICO
27.05.2022	22002414	Corporate	Complaint about Council failing to maintain road causing damage to Mrs A's vehicle	LGSCO cannot investigate something that is better managed through the Courts.

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
24.05.2022	21016609	Childrens	Complaint about care provided for Mrs Y's son. Mrs Y is entitled to overnight respite provision. Mrs Y complained to the Council about several issues, including: Failure to provide agreed short breaks, provision for B being terminated without adequate notice and poor communication	The Council was wrong to decline a stage 2 investigation despite upholding the complaint as 65 days of respite hadn't been provided for, a remedy was offered too. The Council should have still progressed to a stage 2.	The Council agreed to the Ombudsman's recommendation to carry out a stage 2 investigation, apologise to the complainant and remind staff who deal with complaints to follow the statutory process.	Not applicable	Apology letter sent and stage 2 investigation is underway and a reminder to staff has been circulated.
15.6.2022	21016176	Adults	Mr B complained about the Council's decision to assess that his mother, Mrs C, gave money and transferred a property to avoid paying care charges.	Fault found in the Council's decision where it concerns one transfer of money made by Mrs C several years ago. No fault in its consideration around later transfers made by Mrs C, including that of her home. The fault has created uncertainty about the outcome of the Council's assessment.	Council to send letter of apology and re-consider the notional capital and re-consider the decision for Mrs C	Not applicable	Letter of apology being drafted by department and re-consideration of the notional capital in due process.
20.06.2022	21010513	Childrens	Miss X complained the Council did not provide a suitable alternative education for her daughter, Y, when she was out of school.	Fault found for not checking the support in Y's Education Health and Support plan was in place, enabling her to return to school, and delays	Apologise to Miss X for the failings in provision and delays pay Miss X £300 for the frustration caused; pay Miss X, for the benefit of Y, £3,600 to	£300 for frustration £3600 for lack of provision when Y was out of school	Letters being drafted by the time of this report, the review of the EHCP process will be complete by deadline of 3 months

DATE	LGO REF ANNEX PAGE NO	PROCEDURE	COMPLAINT SUMMARY	DECISION	RECOMMENDATION	FINANCIAL REMEDY	STATUS OF AGREED ACTION
				in identifying a new school when it became clear this was needed.	recognise the additional time Y was out of school and without a suitable education as a result of the Council's failings. Council to review its EHC plan and assessment process		

The Ombudsman's final decision

Summary: Mrs Y complains about the lack of support provided by the Council in respect of her son who has complex learning difficulties. The Council upheld Mrs Y's complaint and offered a remedy at the first stage of the statutory children's complaints procedure. When Mrs Y asked the Council to progress her complaint to the second stage of the complaints procedure the Council refused. This is fault. The Council has agreed to progress the complaint, apologise to Mrs Y and remind the relevant staff about the regulations and guidance.

The complaint

1. Mrs Y complains about the Council's failure to provide agreed respite provision for her disabled son.
2. The lack of provision caused significant distress and had a negative impact on her son's wellbeing.

The Ombudsman's role and powers

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

How I considered this complaint

5. During my investigation I discussed the complaint with Mrs Y and considered the complaint correspondence.
6. I contacted the Council to clarify under which procedure it had considered Mrs Y's complaint.
7. Mrs Y and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

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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.

What I found

Children's statutory complaints process

9. The law sets out a three-stage procedure for councils to follow when looking at complaints about children's social care services. The statutory guidance, *'Getting the Best from Complaints'*, explains councils' responsibilities in more detail.
10. The first stage of the procedure is local resolution. Councils have up to 20 working days to respond.
11. If a complainant is not happy with a council's stage one response, they can ask that it is considered at stage two. At this stage of the procedure, councils appoint an investigator and an independent person who is responsible for overseeing the investigation. Councils have up to 13 weeks to complete stage two of the process from the date of request.
12. The statutory guidance makes clear that: "Where a complaint is accepted at Stage 1, the complainant is entitled to pursue their complaint further through this procedure except in the case of cross boundary issues. In all other instances, once a complaint has entered Stage 1, the local authority is obliged to ensure that the complaint proceeds to Stages 2 and 3 of this procedure, if that is the complainant's wish"
13. This approach is echoed in the LGSCO's own guidance, which says we will accept early complaints... "Only in very limited circumstances. The guidance explains the conditions a complaint needs to meet after stage two, to be considered by us instead of continuing to a stage three review panel. These are:
- Stage two has delivered a robust report, a complete adjudication and all complaints (or all significant complaints) have been upheld; and
 - The council has provided a clear action plan for delivery and agrees to meet most or all the complainant's desired outcomes"

"The decision about progressing to stage two lies with the complainant, not the council. Neither the regulations nor the guidance allow a council to refuse a stage two complaint because the stage one complaint was upheld, or because the council thinks there is no substance to the complaint.

This is also the case for stage three, apart from the limited circumstances outlined later. The guidance says once a complaint has entered stage one, the council must ensure the complaint continues to stage two and three if the complainant wishes"

14. If we investigate a complaint and find a council has not followed the statutory complaint procedure, we will usually recommend the council progresses the complaint to the next stage. We will uphold the complaint with a finding of maladministration and injustice.

What happened

15. Mrs Y has a twelve-year-old son, whom I will call B. He has complex learning difficulties and receives social care support from the Council. Mrs Y is entitled to overnight respite provision. Mrs Y complained to the Council about several issues, including: [Page 16 of 72](#)

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- Failure to provide agreed short breaks
 - Provision for B was terminated without adequate notice
 - Poor communication
 - Failure to consult Child and Adolescent Mental Health Services (CAMHS)
16. The Council accepted Mrs Y's complaint under the statutory children's complaints procedure. It upheld Mrs Y's complaint at stage one, primarily because it found Mrs Y had missed 65 nights of respite provision between April 2020 and September 2021. The Council offered a significant financial remedy in recognition of the distress caused to Mrs Y.
17. Mrs Y asked the Council to escalate her complaint to the second stage of the statutory procedure. The Council considered her request but decided "... we would not investigate your complaint at Stage 2 of the complaints process. This is because the complaint was upheld, and apologies and a financial remedy were offered. Further investigation would not result in a different response or outcome".
18. Mrs Y approached the LGSCO for an impartial review of her complaint.

Was there fault by the Council causing injustice?

19. The issues Mrs Y raised in her complaint related to the Council's actions and the social care support provided in respect of B. The law requires certain complaints to be considered through the statutory children's complaint investigation process. Mrs Y's complaint met the criteria for the statutory process. The Council accepted her complaint at stage one and should have progressed Mrs Y's complaint to the second stage when she asked it to do so. Not doing this was fault.
20. To remedy Mrs Y's injustice, the Council has agreed to undertake the remedial actions listed at the end of this statement.

Agreed action

21. Within four weeks of my final decision the Council will:
- Send a written apology to Mrs Y for the time and trouble caused by the Council's refusal to commission a stage two investigation of her complaint;
 - Contact Mrs Y and commence a stage two complaint investigation under the children's statutory complaints procedure; and
 - Remind staff dealing with complaints that, in line with the regulations and guidance, complainants are entitled to pursue their complaints through the statutory process, even when the Council has provided a remedy at stage one. The Council should share the LGSCO's 'Guide for Practitioners' with relevant staff members.

Final decision

22. We have completed our investigation with a finding of fault causing injustice for the reasons explained in this statement.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mr B complained about the Council's decision to assess that his mother, Mrs C, gave money and transferred a property to avoid paying care charges. We find fault in the Council's decision where it concerns one transfer of money made by Mrs C several years ago. We do not find fault in its consideration around later transfers made by Mrs C, including that of her home. The fault has created uncertainty about the outcome of the Council's assessment. The Council accepts this finding and has agreed action it will take to remedy this injustice, set out at the end of this statement.

The complaint

1. I have called the complainant 'Mr B'. He complains on his own behalf and that of his mother 'Mrs C'. He complains that in assessing whether Mrs C should contribute to the cost of residential care, the Council has wrongly assessed Mrs C as having 'notional capital' available to her. In other words, the Council believes Mrs C has intentionally deprived herself of money or other assets to avoid care charges and the Council should include the value of those assets in its financial assessment. This is further to various gifts Mrs C made of money or property between 2014 and 2017.
2. We have previously investigated a complaint from Mr B about this matter and found fault in the Council's decision making. The Council agreed to make a fresh decision on whether it still considered Mrs C had intentionally deprived herself of capital. While the Council has amended its decision, it has still found Mrs C has significant 'notional capital'. So, it is this review decision about which Mr B now complains.
3. Mr B says as a result the Council is unreasonably expecting Mrs C to pay towards her care based on the value of these assets.

The Ombudsman's role and powers

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*)

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5. We investigate complaints of injustice caused by ‘maladministration’ and ‘service failure’. I have used the word ‘fault’ to refer to these. We cannot question whether a council’s decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
 6. 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*)
 7. If we are satisfied with a council’s actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

8. Before issuing this draft decision statement I considered:
 - information gathered during the investigation of Mr B’s initial complaint;
 - contacts between Mr B and the Council which followed our earlier decision and which preceded the Council’s decision on review;
 - relevant law and guidance as referred to in the text below.
9. I also gave both Mr B and the Council a draft decision statement which set out my proposed findings. I took account of any comments made in response before issuing this final decision.

What I found

Relevant Law and Guidance

10. Section 14 of the Care Act 2014 allows councils to charge for care and support services they provide or arrange. Charges are means tested based on a person’s financial resources; including any income or capital they have. Capital includes such matters as savings, investments and can include the value of assets such as houses.
11. The Care and Support (Charging and Assessment of Resources) Regulations 2014 say that “*an adult is to be treated as possessing capital of which the adult has deprived themselves for the purpose of decreasing the amount they may be liable to pay towards the cost of meeting their needs for care and support, or their needs for support*”. In these circumstances the Council is to treat the adult ‘as if they still own the income they have deprived themselves of and to treat that as ‘notional capital’.
12. The Government has also produced statutory care and support guidance in support of the above Regulations. Annex E of that guidance discusses “*deprivation of assets*”. It says a council should refer to the guidance in cases where it suspects somebody has deprived themselves of capital to decrease the amount they are charged for care.
13. The guidance says:
 - deprivation may come to light when a council completes a financial assessment with a client. Authorities must “*treat this issue with sensitivity and care*” (paragraph 3); [Page 20 of 72](#)

- people are entitled to “*spend the money they have saved as they wish – it is their money after all*” (paragraph 4). So, “*deprivation should not be automatically assumed. There may be valid reasons why someone no longer has an asset and a local authority should ensure it fully explores this first.*” (paragraph 5)
- The term ‘deprivation of assets’ refers to when a person has intentionally deprived or decreased their overall assets to reduce the amount they are charged towards their care. This means that they “*must have known that they needed care and support and have reduced their assets in order to reduce the contribution they are asked to make towards the cost of that care and support*” (paragraph 6).
- It also says: “*There may be many reasons for a person depriving themselves of an asset. A local authority should therefore consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:*
 - a) *whether avoiding the care and support charge was a significant motivation in the timing of the disposal of the asset; at the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?*
 - b) *did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?*” (paragraph 11)

Background

14. Mrs C first came to the attention of the Council’s adult social care service in April 2012. At that time, her husband, who I will refer to as ‘Mr C’, was seriously ill in hospital and he passed away the following month. Mr C expressed concern for Mrs C’s welfare. Mrs C was known to suffer from asthma and MS. She was said to be struggling with the stairs and using the shower in the family home. The Council assessed Mrs C and decided her needs did not meet the threshold where she was entitled to receive social care.
15. In March 2013 Mrs C moved to a flat in a retirement complex. She rented this, wanting to see if she enjoyed living there. She rented out the family home.
16. Sometime during 2014 Mrs C gave Mr B’s brother (who I will call Mr D) £15,000. Mrs C said in 2017 this was to support Mr D with his business, although Mr B has subsequently corrected this account saying it was to support Mr D between jobs.
17. In November 2014 Mrs C received some short-term care at home from the Council following a stay in hospital. This ended the following month. She did not have to pay for that care.
18. Around the same time Mrs C received notice that she needed to vacate her rented flat. In January 2015 Mrs C moved to another flat in the retirement complex. This was bought for her by Mr B and his wife, who I will call “Mrs B”, with their savings. Mrs C lived there rent free paying the service charge and for utilities and so on.
19. In November 2015 Mrs C transferred the ownership of the family home to Mr B and Mr D. In March 2021 Mr B told us this was to “compensate” him and Mrs B as it would be many years before they would have access to the money used to purchase her flat. Mr B said that he asked the transfer include Mr D although he did not contribute funds to the flat purchase.

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20. In September 2015 Mrs C had another stay in hospital. The Council did not assess she had any care needs on discharge. It has a record that it gave Mrs C a booklet on 'paying for care' at this time.
 21. In March 2017 Mrs C gifted £6,000 to two daughters of Mr C (Mr B's half-siblings). She did this after receiving a pension lump sum payable in the name of Mr C. Mr B says this was in accord with Mr C's wishes before he died.
 22. In April 2017 Mrs C then gifted approximately a further £30,000, mainly to Mr B and Mr D. Mr B understands this was after an ISA matured. Mr B says the funds given to him and his brother were in recognition of money spent renovating and improving Mrs C's flat after she moved in. Mr B says he and his brother gave most of this money back to their mother. He says all the money that passed between him, his brother and Mrs C was in cash.
 23. In April 2017 Mrs C had another stay in hospital. It is recorded in the case notes that she was suffering with COPD (Chronic Obstructive Pulmonary Disease). On discharge she received some care arranged and paid for by the Council. At this point it was envisaged Mrs C would need care at home on a longer term basis.
 24. The Council therefore completed a financial assessment to see what Mrs C should contribute towards her care. It was during this assessment the three gifts of money I have referred to above came to light. The financial assessment recorded that Mrs C gave money to Mr D in 2014 to help with his business. There is no record of her providing or being asked reasons for the other gifts. It is noted on the form that Mr B owned Mrs C's flat.
 25. The Council decided all the gifts above should be treated as 'notional capital' and so Mrs C was charged for home care from late May 2017 onward. The Council says Mr B challenged this decision at the time. When he did so, it says that it asked him to provide a copy of Mr C's will but that he failed to do so. It also asked him to provide records for money spent on Mrs C's flat but he did not do so.
 26. In July 2018 Mrs C was again admitted to hospital. She was suffering from confusion and hallucinations. Mrs C returned home but the symptoms recurred in September 2018. Mrs C entered residential care around this time, initially on a short-term basis but later as a permanent resident.
 27. In November 2018 the Council therefore undertook a second financial assessment, undertaken with Mr B as he now had a power of attorney to act for Mrs C. As before the Council identified the three gifts of money as deprivation. It also considered Mrs C's transfer of her house to Mr B and Mr D was deprivation and that it would treat the value of this as notional capital also; to the value of £153,000. The Council said that at the time Mrs C transferred the house, it was unsuitable for her given her health needs, therefore she *"would have been aware that [she] may need to make financial provision for future care"*.
 28. Mr B went on to complain at this decision via a solicitor, a process which took over 12 months to complete, mainly because of a delay in the Council providing a copy of Mrs C's social care records. Mr B argued the Council should not treat the transactions as notional capital because:
 - it had provided no evidence which showed Mrs C had gifted or transferred assets to avoid care fees;
 - that all sums gifted or transferred had pre-dated the Council carrying out a financial assessment;

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- that most of the sums gifted and the house transfer pre-dated a time when Mrs C needed any social care and she had no reasonable expectation of needing residential care; the care records provided confirmed this;
 - that gifts were made to help Mr D at a time of financial difficulty; to respect the wishes of Mr C or to recognise that Mr B and Mrs B had purchased her flat;
 - that Mrs C's asthma and MS were always mild and a letter dated June 2020 from a health practitioner confirmed this was still the case; Mrs C entered residential care because of a previously unknown mental health illness whose symptoms only presented from July 2018.
29. In its replies the Council said Government guidance allowed it to consider the timing of a disposal and whether someone had a "*reasonable expectation of needing to contribute*" towards their care needs when they made a gift. The Council suggested that all the gifts, except that made in 2014, were made "*at or around the same time*" that Mrs C began needing care and support. The Council also noted Mrs C had received Attendance Allowance for several years, in recognition that she had some disability. The Council said it would make some adjustment to the notional capital amount to take account that money was spent making Mrs C comfortable in her flat. But it was satisfied it had followed due process.
- Our initial decision**
30. In August 2021 we completed our initial investigation into this complaint. We noted the complaint was late but considered there were special reasons that justified investigation. We considered the Council was at fault in making its decision that Mrs C had intentionally deprived herself of assets and so should be treated as having around £200,000 in notional capital.
31. In summary we were satisfied the Council had raised some relevant considerations in its decision; specifically:
- that Mrs C had health problems from 2012 and was known to social care from this time; she was at that time not found to meet the threshold for social care but was having some difficulties managing her home due to health and age-related issues;
 - that Mrs C had further discussions with the Council about her health and/or care needs before May 2017; the Council had a record that Mrs C received some general information about circumstances where someone may have to pay for care;
 - that in the two months before Mrs C was assessed as having social care needs in May 2017 she had gifted £36,000 in two separate sets of transactions to family members (our decision said over £40,000 but I note this was an error).
32. However, we considered there were other relevant factors the Council had not taken account of:
- that an explanation was put forward for why Mrs C gifted £15,000 to Mr D in 2014 for reasons other than to reduce the level of care charges she should pay; this gift was at a time when Mrs C did not have any assessed social care needs; in its complaint response the Council had indicated it may no longer consider Mrs C had notional capital as a result of making this gift but it had not clarified this;
 - that an explanation was put forward for why Mrs C gifted £6,000 to Mr C's daughters in March 2017 for reasons other than to reduce the level of care

charges she should pay (our decision erroneously said this was £12,000 – the same error as highlighted in the paragraph above). The Council's decision and complaint replies did not say if it accepted this explanation and if not, why not or what evidence it might need to be persuaded otherwise;

- that an explanation was put forward for why Mrs C gifted some of the £30,000 in April 2017 to Mr B and Mr D in recognition of money they spent on her flat. The Council's response to the complaint had implied it might accept some of this explanation, but it had not clarified this; nor what difference this made to its assessment;
- that an explanation was put forward for why Mrs C gifted her home to Mr B and Mr D for reasons other than to reduce the level of care charges she should pay. The Council's decision and complaint response did not say if it accepted this explanation and if not, why not.

33. We considered the failure to consider these factors stemmed from the Council not taking a sufficiently robust approach in gathering evidence and considering all relevant Government guidance. We could not say whether but for this fault the Council would have reached a decision with the same outcome, a very different outcome or one which may have gone only slightly to Mrs C's favour. But we considered this uncertainty was an injustice to Mrs C and Mr B. So, we recommended the Council review its decision. Something which it agreed.

The Council's review

34. In January 2022 the Council made its decision on review. This followed exchanges of emails it had with Mr B during the intervening time.
35. I noted that before making its decision the Council had set out its general view on Mrs C's anticipated need for care, in the time before she moved into residential care. It said that it did not accept Mrs C would have "*no reason to expect care would be needed*". It noted she received Attendance Allowance and had MS; a condition which can lead to "*cognitive problems, infections and other symptoms*" leading to hospitalisation. Mr B responded to again point out Mrs C's MS was mild. He provided a second letter from a medical professional dated February 2021 which says this. Also, that many people live in the community with Attendance Allowance and without an expectation they may need residential care.
36. In considering each part of the review decision I noted first the Council decided to continue to treat the gift in 2014 to Mr D as a deprivation of assets to reduce care costs. The Council asked Mr B if he could provide evidence in support of statements made previously that his brother's business had been in trouble in 2014. For example, company accounts. Mr B initially gave the Council his brother's contact details. Later he provided a statement saying that at the time of the gift Mr D was not running a business but between jobs (see also paragraph 16 above).
37. In its decision the Council said that it was willing to accept the money was not given for the benefit of avoiding care charges but only if it had 'verification' for this. It was for Mr B to provide this and not for the Council to make enquiries. It suggested it would revisit this decision again if he provided evidence such as "*final business accounts*".
38. Next the Council said that it no longer considered Mrs C's gift of £6000 to Mr C's daughters in 2017 as notional capital. It accepted this money was gifted in accord with Mr C's wishes and not intended to reduce what Mrs C paid towards care.

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39. On the third gift, that of around £30,000 in 2017 to Mr B and Mr D, the Council said that it would not regard money spent on renovating Mrs C's flat as notional capital. But that it needed 'verification' this was the case. It said this could be in the form of invoices or quotes provided for whatever work was done on the flat. I note that in reply to further enquiries about this money Mr B stated the transactions between him, his brother and his mother had all been made in cash.
40. Finally, with regard to the house transfer, the Council said that it accepted Mrs C made the house transfer to Mr B and Mr D, in recognition of Mr and Mrs B purchasing her flat. But the Council says in that case it would expect to have seen a transfer also the other way; with ownership of the flat being made over to Mrs C. It considered therefore Mrs C had a beneficial interest in the flat and said it would treat its value as notional capital, which it calculated at £94,000 (a figure which appears based on a recent sale of a flat in the same complex). It said if the flat was in Mrs C's name then it would consider making a deferred payment arrangement with her. This is an arrangement that allows the Council to pay for someone's care who has capital above the upper threshold. In effect the Council loans the money to pay for the care in return for those payments being secured against property. The value of the loan plus interest is then recovered in the future.
41. I noted that before making this decision the Council had asked Mr B more about the transfer and he had referred it back to the previous correspondence sent on his behalf by the solicitor. But he also drew attention to an email he had sent in August 2020 to the Council, around a time when Mrs C moved care homes. In this Mr B had said that he and his brother proposed transferring the house given to them by Mrs C back into her name. They proposed this could then be used as an asset against which care charges could be recovered in the future, under a deferred payment arrangement with the Council.

My findings

General approach

42. We do not make decisions on a council's behalf or provide a route of appeal against their decisions. Our role is to consider whether a council has followed the correct process in making its decision. We will therefore look at whether it has considered all relevant information, taking nothing irrelevant into account and given clear reasons for its decision.
43. I note at the outset that the Council now accepts Mrs C's reasons for gifting £6000 to Mr C's daughters in 2017. So, that no longer forms part of its consideration of Mrs C's notional capital. That means there are three parts to its decision that are still contested by Mr B which I will consider in turn.
44. In doing so, I take account of the law and government guidance which tells councils how they should decide if deprivation has taken place with the intent of reducing care charges. There are three factors the guidance suggests a council must consider as part of its decision making.
45. First, the council should ask if the user of services "*must have known that they needed care and support*". This will be a case specific judgment. For example, many people live with chronic long-term health conditions but may not need care and support. While others may have conditions that will degenerate quickly and where it is clearly anticipated such needs will arise. Many will lie between these extremes, and it will not be possible to say with certainty when someone will know for sure that they will need care and support. A council can reach a judgement on the

balance of probabilities as to when they consider this knowledge would have arisen.

46. Second, the person must have had a '*reasonable expectation*' they may need to pay towards that care and support at the time of the deprivation. We do not consider this means the user of services must have detailed knowledge of the law underpinning the charges a council can make for contributions. The knowledge could be quite general in nature. The Courts have held for example that someone would not need to know of the exact upper capital limit beyond which a council does not have to fund care (see *Yule v South Lanarkshire Council* [2000]). But the user of services could not have deprived themselves of capital unless they knew they 'might' be liable to contribute to care charges. (see *R (Beeson) v Dorset County Council* [2001]).
47. Third, the council should look at the timing of the disposal of an asset. This can help inform a decision about the person's motivation for disposing of the asset. The guidance tells a council to ask itself if, "*at the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?*". In addition, "*did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?*" at that time.
48. That is not to say timing is everything. Even when an individual may have existing care and support needs or know in general terms that they may be expected to pay for care, the Council still needs to consider the individual's motivation in disposing of an asset and explain its reasons.
49. But the guidance recognises that it is unlikely that anyone deliberately setting out to deprive themselves of capital to reduce their care charges will be willing to say so or have left anything in writing confirming the fact. So, while a council must explore with the user of services (or their representative), their reasons for depriving themselves of capital, it can still draw inferences on motivation in line with the guidance set out above. This includes taking account of the timing of the disposal of an asset.

The 2014 gift of money to Mr D

50. I have some concerns with the Council's approach to this gift. First, its final response to Mr B does not appear to take account of what he stated in reply to its further enquiries about this matter. Mr B told the Council that contrary to its record of conversations with Mrs C in 2017, this money was not given to support Mr D with his business but to support him between jobs. So, I am unclear why the Council continues to want details of Mr D's business which may no longer be relevant.
51. But my concern relates more to how the Council has applied itself to the timing of Mrs C's actions. This gift was made three years before Mrs C was assessed as having social care needs and four years before she needed residential care. It was also made before the Council has any record that it gave her information on paying for care.
52. While I note the Council has set out its general view on why Mrs C may have been expected to realise a need for care, this is a factor specific to the timing of each gift. So, I do not consider the Council can fall back on a generalised assumption that someone with MS or someone who receives Attendance Allowance, will therefore have an expectation of needing social care from the date of diagnosis or when that benefit goes into payment.

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53. In this case I find there are records in 2014 that point to Mrs C becoming older and this led her to leave the marital home. Clearly she also had some long-standing health conditions. But the Council had assessed that Mrs C did not have social care needs at that time. And I note this assessment took place before Mrs C moved to the retirement complex, where the accommodation would place fewer demands on her.
54. On balance therefore I am not persuaded the Council has made a proper decision taking account of the timing of this gift and Mrs C's knowledge at the time. So there remains uncertainty about whether this gift should be treated as notional capital for Mrs C. I set out below how I want the Council to remedy this injustice.

The 2017 gift of money to Mr B and Mr D

55. I consider the evidence shows that by the time Mrs C gifted this money, the Council can more readily point to evidence showing she would have had a realistic expectation of needing social care. This gift was made just a few weeks before Mrs C began to receive care at home following hospital admission for a chronic condition. It is also clear in the time since moving to the retirement complex Mrs C's general health had declined, as illustrated by her hospital stays.
56. In addition, by now the Council can show Mrs C had received information explaining in general terms when the Council may make charges for care.
57. I am satisfied the Council has taken account of what Mr B has said about the reason for the gifts. I also note that the cause of Mrs C ultimately entering residential care was not directly related to her previous hospital admissions. But despite these factors, I consider the Council is not at fault for still making the inference that deprivation has occurred, taking account of the timing of the disposal and the lack of supporting evidence for Mr B's account that the money was in return for decoration, furnishing or renovation of Mrs C's flat.
58. I also consider what lends weight to the Council's decision here is that it first asked Mr B in 2017 to demonstrate the payments were in return for improvements to the flat. While I do not dispute the difficulty in gaining such evidence now, it would presumably have been more likely to be available nearer the time. That the Council has indicated a willingness even now to review its decision should new evidence come to light goes to its credit. I could not expect it to offer more.
59. Consequently, I am satisfied it has reached an administratively sound decision on this disposal of assets by Mrs C.

The gifting of the house to Mr B and Mr D

60. I am also satisfied the Council has reasonably taken account of Mrs C's expectation of care and knowledge of potential care charges when looking at this gift also. I appreciate the transfer took place in 2015. At the time Mrs C was not receiving social care. But had experienced another hospital stay and received information from the Council about care charging. These are reasonable factors for the Council to take into account.
61. I also find no fault in the Council drawing attention to transaction, on its own terms, being left incomplete. Because if Mrs C transferred ownership of her home as compensation for Mr and Mrs B's purchase of her flat, then I would expect to see that flat (or at least part thereof depending on the relative values of the properties) being transferred to her.
62. I find the house is worth more than the flat. So by regarding Mrs C as having the net worth of the flat as her beneficial asset I consider the Council has approached

this matter as fairly as it can. Further it has said that if the flat transfers to Mrs C's ownership it will enter a deferred payment arrangement. I find no fault in this approach, noting that Mr B has not indicated the transfer of the house back to Mrs C's ownership, mentioned in 2020, has completed.

63. I am satisfied the Council has therefore reached an administratively sound decision therefore on this disposal also.

Agreed action

64. The Council accepts the findings I have set out above. To remedy the injustice identified it has agreed, that within 20 working days of this decision, it will:
- a) write to Mr B with a further apology accepting the findings of this investigation;
 - b) agree to reconsider again its decision on the gift of £15000 by Mrs C to Mr D in 2014 taking account of my comments above; **or** it will agree that moving forward it will no longer treat this amount as part of Mrs C's notional capital;
 - c) after its consideration of b) completes the Council will write to Mr B with a statement of what notional capital it believes Mrs C currently holds; taking account of the passage of time; her costs of care and so on. If this will not be possible without making more enquiries of Mr B then it should write to him and explain what information it needs to produce such a statement.

Final decision

65. For reasons set out above I uphold this complaint finding fault by the Council causing injustice to Mrs C. The Council accepts this finding and has agreed action that I consider will remedy that injustice. Consequently, I have completed my investigation satisfied with its response.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Miss X complained the Council did not provide a suitable alternative education for her daughter, Y, when she was out of school. Although the Council was not aware initially that Y was out of school, it was at fault for not checking the support in Y's Education Health and Support plan was in place, enabling her to return to school, and delays in identifying a new school when it became clear this was needed. As a result, Y missed out on education from March 2020 to July 2021. It should review its processes and make a payment to remedy the injustice caused.

The complaint

1. Miss X complained the Council did not provide a suitable education for her daughter, Y, between February 2019 and July 2021, when she was out of school.
2. As a result, Miss X says Y is now academically behind her peers, has missed opportunities to interact with peers socially, and her mental health has suffered. She is now attending a special school but is struggling due to severe anxiety about education.
3. Miss X also says she had to remain at home with Y, which meant she could not work, and was reliant on benefits. In addition, she had the expense of purchasing online learning resources and educational materials, which affected the family financially.

What I have investigated

4. I have investigated the Council's role from February 2019 when Y stopped attending school. I have not investigated Miss X's concerns about the actions of Y's school, for reasons set out at the end of this decision statement.

The Ombudsman's role and powers

5. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
6. Miss X complained to us in October 2021. We would not usually investigate events more than 12 months before a person complains to us, but I have exercised discretion to investigate the period from February 2019 when Y stopped

attending school. This is because there was potentially a significant injustice to her caused by being out of education until July 2021 and I am satisfied the Council was aware she was out of school by April 2019.

7. We cannot investigate complaints about what happens in schools. (*Local Government Act 1974, Schedule 5, paragraph 5(b), as amended*)
8. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)
9. 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.
10. 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*)
11. We cannot question whether a council’s decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
12. If we are satisfied with a council’s actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

13. I considered:
 - the information provided by Miss X and the Council;
 - relevant law and guidance, as set out below; and
 - our guidance on remedies, available on our website.
14. Miss X and the Council had an opportunity to comment on my draft decision and I considered their comments before making a final decision.

What I found

Relevant law and guidance

Education Health & Care Plans

15. A child with special educational needs (SEN) may have an Education, Health and Care (EHC) plan. This sets out the child’s needs and what arrangements should be made to meet them.
16. The Statutory Guidance: Special Educational needs and disability code of practice: 0 to 25 (the Code) provides guidance to councils and other professionals about EHC plans and processes, including:
 - (para 9.71) health care provision specified in section G of the EHC plan must be agreed by the CCG and any health provisions should be agreed in time to be included in the draft EHC plan;

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- (para 9.77) the council must send a draft EHC plan to the child's parent and give them at least 15 days to make representations on the content. During that period it must make its officers available to discuss the content on request;
 - (para 9.96 & 9.98) a parent has a right to request a personal budget when the council has completed an EHC needs assessment and confirmed it will issue an EHC plan, and during the statutory review of an existing EHC plan. Personal budgets enable a parent to arrange the support in a child's EHC plan themselves. The council must provide advice and information about personal budgets and prepare a personal budget when requested;
 - (para 9.126) the council must notify the parent of their right to appeal to the SEND Tribunal and the time limit for doing so;
 - (para 9.130) formal reviews of the EHC plan must take place at least annually. If the child's SEN change, the council should hold a review as soon as possible to ensure that provision specified in the plan is appropriate. The council can ask the child's school to arrange the review on its behalf (para 1.73); and
 - (para 9.169) the first review must be held within 12 months of the date the EHC plan was issued, and the council's decision following the review meeting – whether to amend, maintain or cease the plan - must be notified to the parent within four weeks of the review meeting.
17. We cannot investigate complaints about the support set out in the EHC plan nor the educational placement named in it. Parents can appeal to the SEND Tribunal if they are unhappy with those aspects.
 18. The Council is responsible for making sure that the support specified in the EHC plan is put in place. We can investigate complaints where support has not been providing or there has been a delay in arranging it.
 19. The Ombudsman considers councils should be able to demonstrate due diligence in discharging this important legal duty and as a minimum have systems in place to:
 - check the special educational provision is in place when a new or substantially different EHC plan is issued or there is a change of placement;
 - check the provision at least annually via the review process; and
 - investigate complaints or concerns that provision is not in place at any time.

Suitable education

20. 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. (*Education Act 1996, section 19*). We refer to this as section 19 or alternative education provision.
21. 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*)
22. Suitable education means efficient education suitable to a child's age, ability and aptitude and to any special educational needs he may have. (*Education Act 1996, section 19(6)*)
23. The education provided by the council must be full-time unless the council determines that full-time education would not be in the child's best interests for reasons of the child's physical or mental health. (*Education Act 1996, section 3A and 3AA*)

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24. The law does not define full-time education but children with health needs should have provision which is equivalent to the education they would receive in school. If they receive one-to-one tuition, for example, the hours of face-to-face provision could be fewer as the provision is more concentrated. (*Statutory guidance, 'Ensuring a good education for children who cannot attend school because of health needs'*)

What happened

25. Y has a number of physical disabilities and special educational needs. She moved to secondary school, school 1, in September 2018, although only on a part-time basis, due to extreme fatigue arising from her disabilities. The transition to school 1 did not go well and by February 2019 Y had stopped attending. School 1 recorded her absence as "*anxiety related non attendance*" (ARNA).
26. Initially, Miss X contacted school 1 and it agreed a range of actions to help Y return to school. Miss X says those actions were either not taken or were not successful. Miss X complained to school 1 in May 2019, following which school 1 said it would support her request for an Education Health and Care (EHC) plan for Y, which she had made in April 2019.
27. The Council said it was not aware of Y until Miss X requested an EHC plan. It then carried out an assessment of Y's special educational needs (SEN).
28. Miss X says she was initially given three days to comment on the draft EHC plan instead of the 15 days required by the Code. The Council accepted this but said the full time was given when Miss X raised concerns. In addition, a meeting was held at the school in September 2019 to discuss the draft plan.
29. It is unclear whether the paediatrician was invited to that meeting. They did not attend it and they said they could not comment on the draft plan in the required timescales. The Council said the paediatrician sent regular "clinic" letters providing updates on Y's health needs but acknowledged that when it did not receive a response from the paediatrician it should have followed up on this. Miss X says Y's needs and the support she needed were not accurately reflected in the EHC plan as a result.
30. The Council issued a final EHC plan on 24 September 2019, which was almost 22 weeks after the request. The EHC plan set out the support Y needed and named school 1 as a suitable school for Y. Miss X had the right to appeal to the SEND Tribunal if she was unhappy with the content but did not do so.
31. In April 2019, school 1 told Miss X it would ask for support from the Council's Health Related Education Team (HRET). It is unclear when the referral was made but the school told Miss X it was meeting with HRET in May 2019. Miss X said there was a delay in HRET providing tuition due to a lack of resources, but home tuition was put in place for seven weeks after the EHC plan was issued. The Council was aware of the plan for home tuition as part of a "*staged reintegration to school*", and this was set out in the EHC plan.
32. In December 2019 school 1 arranged a meeting to discuss the support Y needed. Miss X says she asked for a mix of home tuition and sessions in school so Y could get used to the school environment but that school 1 told her Y could not have home tuition and remain in its roll. Although a Council officer from the Integrated Children with Disabilities Service (ICDS) attended that meeting, the Council has no record of it and cannot say whether home tutoring or further assessments for Y were discussed. Its officer recalled it was a positive meeting, which reported that Y had engaged with HRET and the plan was for her to start

attending sessions at school. In its complaint response it apologised if its officer had not explained all the available options.

33. Miss X understood the December 2019 meeting was an early annual review. However, the Council said it did not receive annual review documents from school 1 following the meeting and therefore did not consider it was a formal annual review meeting.
34. In January and February 2020, a teaching assistant (TA) from school 1 provided seven sessions of up to one hour each at Y's home to build a relationship with her to support her return to school. Alongside this, Y had some visits to the school.
35. Miss X says there was a meeting with school 1 in February 2020 in which it said it could not meet Y's needs. Miss X says School 1 said it would arrange an urgent annual review and suggest a change of placement. It advised Miss X to start looking at special schools, which she did. The Council says where schools are not able to deliver the support in an EHC plan they should complete a Placement Discussion form, which informs a discussion with the Council about whether an early review is needed. There is no record that school 1 told the Council it could not meet Y's needs at this stage or completed a form.
36. In mid March school 1 closed due to the first national lockdown in response to the COVID-19 pandemic and the TA visits stopped. Miss X contacted school 2, an independent special school, but she could not visit due to COVID-19 restrictions. School 1 carried out a risk assessment and also carried out welfare checks during the summer term. It did not tell the Council it had any concerns about Y.
37. In May 2020, the Council contacted Miss X as part of an exercise to contact all families whose children had EHC plans for "*structured conversations*" about provision for them during the pandemic. Miss X asked if the conversation could be by email. She said Y would need to remain at home to protect a sibling who was extremely clinically vulnerable to COVID-19. Miss X said she had set up an educational timetable for both children for the rest of the academic year. In the same email, Miss X asked the ICDS team for financial support to cover the cost of educational resources for Y "*whilst school was not an option*". The Council accepted it did not respond to this request, for which it apologised in October 2021. It held the structured conversation in June 2020, which it said did not indicate any concerns about Y at that time.
38. Whether or not it had agreed to an early annual review, the school should have arranged a routine review of Y's EHC plan in September 2020. It did not do so until November 2020. The Annual Review records a request for a change of school for Y.
39. Following the review meeting, Miss X asked the ICDS team to fund an assessment at school 2. It did not respond. An officer later told Miss X her email had gone into a "junk" email folder, although the email string indicates Miss X was replying to an email the officer sent her. The Council, in its complaint response in June 2021 apologised for the "*unacceptable time*" she had to wait for a response and said it would remind staff of the need to check all email folders daily.
40. School 1 sent the annual review paperwork to the Council in December 2020 and in January 2021 the Council started consulting with alternative schools, including school 2, which was Miss X's preferred school.
41. The Council issued a final amended EHC plan in February 2021. This plan named school 1 as the suitable school for Y. The Council told Miss X this was because it

could not remove school 1 and name school 2 until it had received a formal offer of a place.

42. School 2 carried out an assessment to decide if it could meet Y's needs in March 2021. It confirmed it could offer Y a place in May 2021 and she started there in early July 2021, initially on a part-time basis to help her reintegrate into a school environment.

Complaints process

43. Miss X complained in early May and the Council responded at stage 1 of its process in early June. It apologised for delays in responding to emails and a failure to progress the change of school placement in a timely manner. Miss X was unhappy with the response. On 6 June 2021 she raised further questions and asked the Council to consider the complaint at stage 1.
44. The Council responded at stage 2 in October 2021. It said:
- It could not investigate some of Miss X's concerns because school 1 was an academy;
 - School 1 had not told it Y was not attending school and she remained on its roll until an alternative placement was confirmed in May 2021;
 - It was not aware of Y until Miss X asked for an EHC plan. This was issued slightly outside statutory timescales, but this period included school summer holidays. It was aware school 1 provided support for seven weeks after the plan was issued;
 - It could not comment on the annual review being two months later as reviews are arranged by schools. Council officers were not required to attend unless either the school or parent had raised concerns that required the Council's input;
 - School 1 could not be removed from Y's EHC plan until after a new school had been found and a formal offer made. It could not explain why officers told Miss X on two occasions that she needed a further annual review in order to change the named school, since the review in November 2020 had confirmed a change of school was needed;
 - It said before April 2021, IDCS cases did not have an allocated case worker unless there was specific work that needed doing. Since then, all cases have an allocated caseworker;
 - It accepted some fault around communications. Records show one caseworker did not inform Miss X they had been allocated, and although they did confirm in January 2021 that they would be consulting alternative schools, they did not provide any updates about this. The Council acknowledged Miss X had sent several emails asking for information and updates that were not responded to, and that her request for financial assistance in June 2020 was not replied to. It apologised for the poor communication, offered Miss X £300 and said it would raise the issue with managers so they could learn from the complaint.

My findings

45. Miss X's account is that school 1 could not meet Y's needs from the outset but school 1 did not request an EHC assessment and plan nor explain to her that she could do so herself. As a result, the Council was not aware of Y until Miss X asked for an EHC plan in April 2019. I cannot investigate the actions or inactions of schools.

-
46. Nor did school 1 tell the Council that Y was not attending school from February 2019. The Council has a system that requires schools to report absences of more than 15 days for health reasons, so the relevant team can consider what support is needed. Again, I cannot comment on the actions or lack of action by schools, but the Council has agreed to remind school 1 of its obligations to prevent a recurrence of this situation.
47. After Miss X contacted it in April 2019, the Council carried out an EHC assessment and issued a final EHC plan in September 2019, which was in line with statutory timescales.
48. The Council acknowledged it did not initially offer Miss X the full 15 days to comment on its draft plan, but this was rectified when she raised concerns and a meeting was arranged to discuss the draft. The Council also acknowledged it had not followed up when the paediatrician failed to respond to a request for comments on the draft plan. The Council did not fully adhere to the Code in these respects, which was fault, but I am satisfied this did not cause an injustice to Miss X or Y.
49. The Council was aware that Y was being educated at home when it issued the EHC plan, which set out a programme for reintegration. An officer attended a meeting in December 2019 to discuss the support Y needed to return to school. The Council has no record of that meeting. It acknowledged the poor record keeping fell below accepted standards. The lack of a proper record of a key meeting was fault. As a result, there is uncertainty about what was discussed and whether the officer provided appropriate advice to Miss X about the available options for Y.
50. There is no evidence school 1 told the Council in February 2020 that Y had not been able to return to school, nor that it could not meet her needs. However, the Council was aware in December 2019 that Y was not attending school and therefore I consider it should have followed up with school 1 to ensure the reintegration plan was working. It failed to do so. This meant it was not aware Y was still not attending school in February 2020 and that a review of her EHC plan may be needed.
51. In March 2020 support for Y at home from school 1 staff stopped due to COVID-19 restrictions. The Council did not identify any concerns when it carried out a risk assessment in June 2020. However, it accepts it overlooked Miss X's request for financial support, which was fault. The Council could have considered using a personal budget to enable Miss X to arrange for the support in Y's EHC plan to be provided privately whilst school 1 was unable to do so.
52. School 1 should have arranged an annual review in September 2020. It did not hold the review until November and did not send the review documents to the Council until late December 2020. The Council was entitled to delegate the arranging of the review to school 1. I have seen the comprehensive guidance the Council provides for schools about annual reviews and am satisfied the guidance was sufficient for school 1 to understand what it needed to do and when. However, I have not seen evidence of a system whereby the Council monitors this and follows up with schools when reviews are late. The Council's failure to monitor was fault. This added to the delay in identifying a suitable alternative placement for Y.
53. At the annual review school 1 said it could not meet Y's needs and recommended a special school. Miss X asked the Council to consult school 2 in November 2020 and it acknowledged this request but took no action to do so until January 2021.

School 2 said it needed to carry out assessments but these were not arranged until March 2021, which appears to be due to delays in agreeing the funding for the assessments. The Council accepted there was a delay in the consultation process, which was fault. In its response to my enquiries, it said it was carrying out a review of its process and would be implementing changes to prevent recurrence of this fault.

54. The Council issued a final amended EHC plan in February 2021. It named school 1, despite having accepted school 1 could not meet Y's needs. The Council accepted this was wrong because it was actively seeking a specialist placement at that point and should therefore have named a type of placement. Its failure to do so caused Miss X additional time and trouble in pursuing this.
55. The Council, in its complaint response, accepted there were failings in its communications, including failures to respond to emails from Miss X and delays in doing so. This was fault, which caused frustration for Miss X and added to her time and trouble pursuing the Council. The failings occurred in part because the Council did not have a consistent point of contact for parents of children with SEN. It has since reviewed its processes and is implementing a new system.
56. There was no fault in the way the Council responded to Miss X's complaint at stage 1. But there was a long delay between June and October 2021 in responding at stage 2, which was fault. This meant Miss X had to keep chasing for a response so she could complain to us.

Agreed action

57. The Council will, within one month of the date of the final decision:
- apologise to Miss X for the failures identified, including the failure to keep a proper record of the meeting in December 2019, the failure to follow up on the reintegration plan in Y's EHC plan, its failure to consider the request for financial support, the failure to monitor and follow up on the late annual review in 2020, the delays in its consultation process with schools, its error in naming school 1 in the amended plan in February 2021, its poor communication and the delay in responding to the complaint at stage 2;
 - pay Miss X £300 for the frustration caused, and the time and trouble she was put to in pursuing the Council;
 - pay Miss X, for the benefit of Y, £3,600 to recognise the additional time Y was out of school and without a suitable education as a result of the Council's failings.
58. The Council will, within three months of the date of the final decision, complete its review of its process for EHC assessment and plans, including ensuring a consistent point of contact for families of children with SEN and reducing delays in consulting with schools. It should report to us on its review and the changes it has made.
59. The Council will, within three months of the date of the final decision, review its processes to ensure it:
- monitors annual reviews and follows up with schools where it has not received annual review records on time;
 - checks the provision in new and amended EHC plans is being delivered and, in particular, checks that plans for reintegrating children into school have been successful and provides further advice and support if needed;

-
- responds to complaints in line with the timescales in its policy.

Final decision

60. I have completed my investigation. I have found fault leading to personal injustice. I have recommended actions to remedy that injustice and prevent recurrence of the fault.

Parts of the complaint that I did not investigate

61. Some of Miss X's concerns were about how Y's school handled matters, particularly during Y's transition to secondary school in Autumn 2018, its failure to advise her about requesting an EHC plan for Y and its failure to tell the Council that Y was not attending school. We cannot investigate concerns about what happens in schools.

Investigator's decision on behalf of the Ombudsman

21 July 2022**Agenda Item: 5****REPORT OF SERVICE DIRECTOR FOR FINANCE, INFRASTRUCTURE &
IMPROVEMENT****ANNUAL FRAUD REPORT 2021/22****Purpose of the Report**

1. To present to Members the Council's Annual Fraud Report.

Information

2. The Council's strategy for countering fraud and corruption includes the requirement for an Annual Fraud Report to be submitted to the Governance & Ethics Committee. This requirement is included in the strategy with a view to demonstrably strengthening the counter-fraud culture at the Council.
3. The attached report represents the sixth edition of the Annual Fraud Report. It sets out an update regarding national fraud risks impacting on the County Council, the preventative and detective incidents identified over the last 12 months and an assessment of the Council's resilience to attacks. The report also reviews progress against the fraud related actions planned for delivery in 2021/22, along with those to be pursued in 2022/23 to ensure the Council's defences against fraud are maintained.

Other Options Considered

4. None, since the requirement to publish an Annual Fraud Report is a feature of the Council's strategy for countering fraud and corruption.

Reason for Recommendation

5. To inform the Committee of the Council's current arrangements for tackling fraud and corruption and to invite suggestions for how those arrangements can be improved.

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 the Committee notes the content of the Annual Fraud Report 2021/22.

Nigel Stevenson

Service Director for Finance, Infrastructure & Improvement

For any enquiries about this report please contact:

Simon Lacey

Interim Chief Internal Auditor

Constitutional Comments (GR 10/06/2022)

No decision is required in respect of this report.

Financial Comments (RWK 13/06/2022)

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

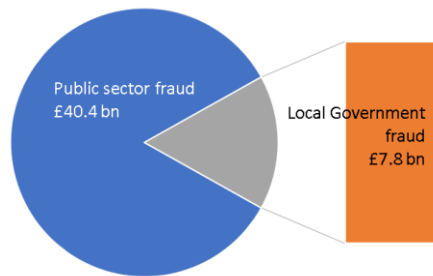
Electoral Division(s) and Member(s) Affected

- All

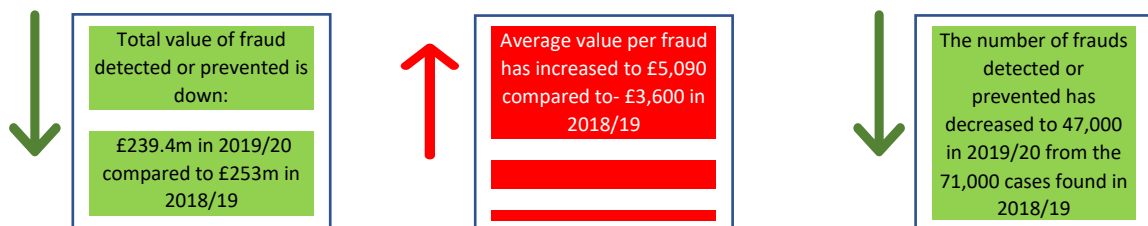
ANNUAL FRAUD REPORT 2021/22

1. National Fraud Landscape

- 1.1. The CIPFA backed publication, 'Fighting Fraud & Corruption Locally' (FFCL), is the recognised counter fraud and corruption strategy for local government. Its fraud indicator estimates were most recently refreshed in 2017, and these suggest significant losses to fraud for local government and the public sector more widely.



- 1.2. Whilst the above estimates have not been updated since 2017, recent trends suggests that tougher approaches to tackling cross-boundary and organised fraud and corruption attempts, as well as addressing new risks such as social care fraud and cyber issues are necessary. Local authorities have set up various working groups to look at fraud risks including the area of social care fraud and how this might be tackled. The Midland Counties Counter-Fraud Group, who we are a member of, will feedback on any developments.
- 1.3. The key fraud risk areas for local government are highlighted by the CIPFA Counter Fraud Centre (CCFC)'s annual 'Counter Fraud and Corruption Tracker' (CFaCT). The Council participates in this annually, however, the exercise was not undertaken in 2020/21. The Annual Fraud Survey was suspended last year and is being operationally reviewed to cover relevant fraud and is likely to be reinstated in the near future. The latest update from August 2020 however, reported the following key findings on the incidence of fraud across local government.

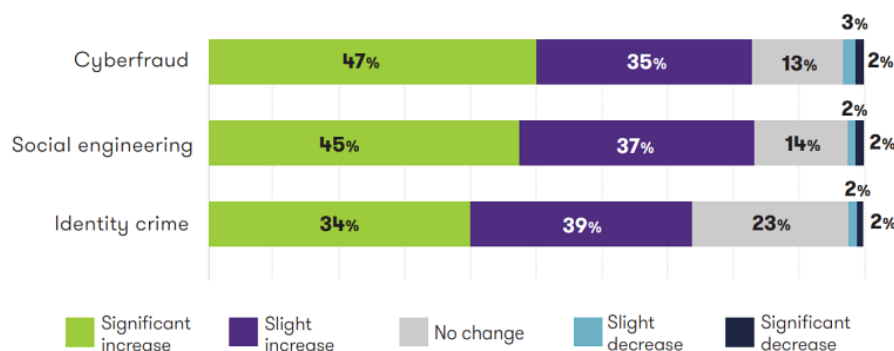


The main targets for fraud and national trends in incidence may be broken down as follows:

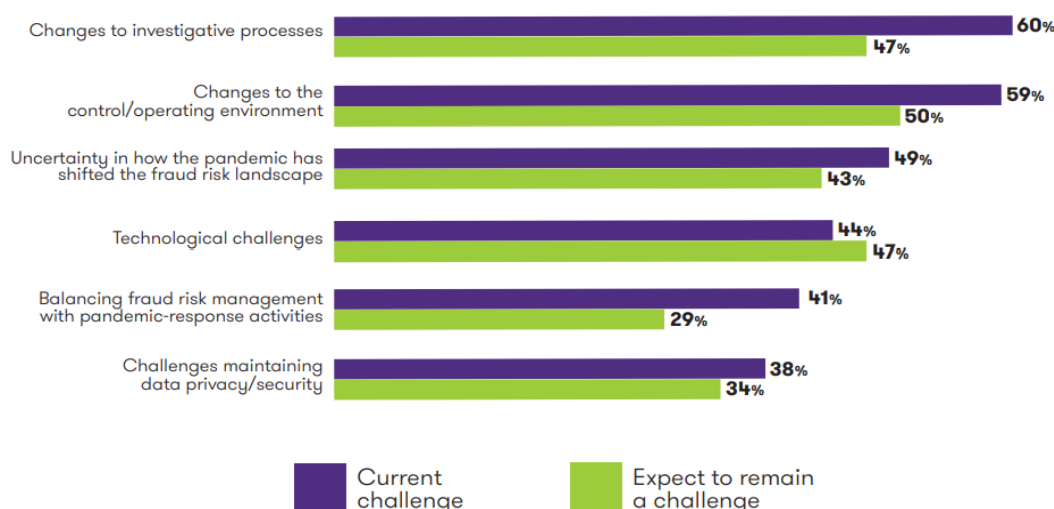
Target	Trend (volume)	Target	Trend (volume)
Disabled parking concessions	UP	Serious & Organised Crime	Down
Adult Social Care – personal budget	UP	Payroll	Down
Adult Social Care - other	Down	Expenses	UP
Insurance	UP	Recruitment	Down
Procurement	Down	Pension	Down
Mandate Fraud	UP		

Source: CFaCT Summary Report 2020 – based upon estimated total figures

- 1.4. In light of the lack of more recent data, we have identified a report produced by the Association of Certified Fraud Examiners (ACFE) and Grant Thornton and this indicates that many organisations have continued to uncover more fraud since the onset of the pandemic. Furthermore, there is an expected change in the specific fraud risks over the 12 months from June 2021 as follows:



- 1.5. In addition, the findings indicate the top challenges facing anti-fraud include the following changes:



- 1.6. The above threats have been considered as part of our fraud risk assessment (FRA) outlined in section 3 and we have considered them in our programme of work for 2022/23.

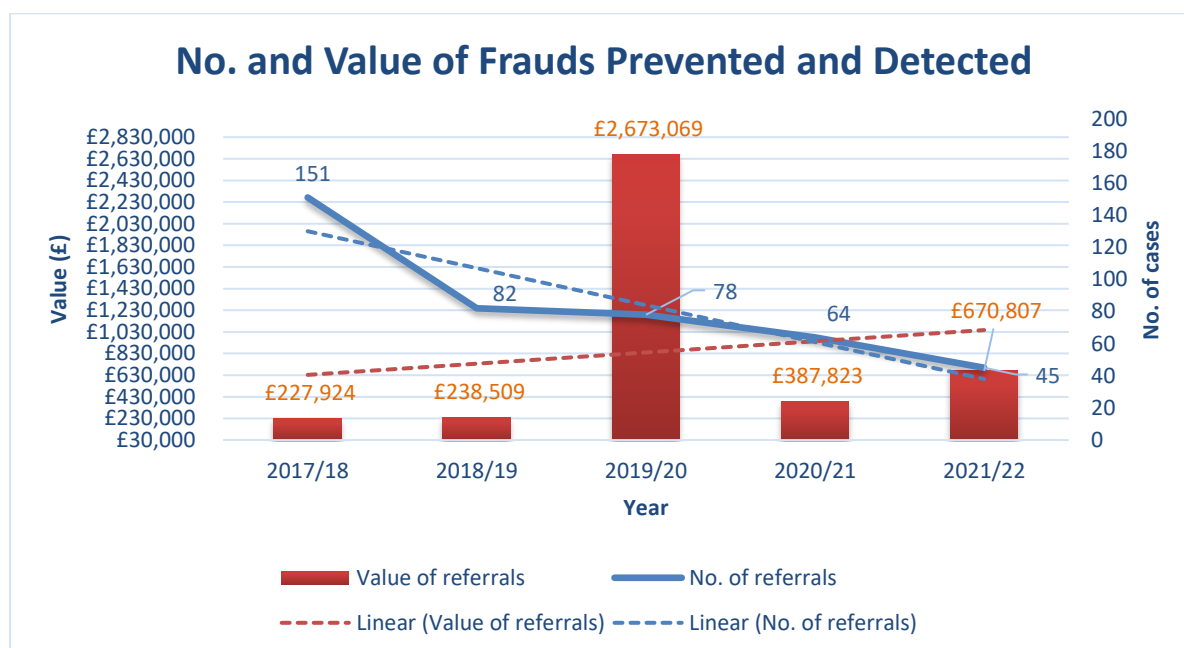
2. Incidence of Fraud Prevention and Detection at Nottinghamshire County Council

- 2.1. The Council is committed to responding to the threat of fraud and it continues to take a zero-tolerance stance. This is put into practice through a broad range of activity. The continuing counter fraud strategy over the past few years has focused on prevention and detection of fraud. This can be attributed to several factors including:

- Corporate Leadership Team's and senior members' commitment to the counter fraud agenda through the development and backing of the Counter Fraud and Counter Corruption Strategy
- Continued engagement with national research, intelligence gathering and development of data analysis
- Risk assessment to identify emerging risks and to target reviews in higher risk areas

- Raising awareness of the counter fraud agenda among all our staff, along with improving understanding and arrangements for capturing instances of detected and prevented fraud
- Officers across the Council undertake a variety of daily activities to prevent and detect fraud
- A minority of cases result in sufficient evidence to warrant the use of the prosecution sanction

2.2. Within this section we recognise both fraud detection and fraud prevention outcomes in assessing the value of the Council's overall exposure to suspected and possible fraudulent activity. The graph below analyses the trend over the last five years in the number and value of fraud prevention and detection cases at the Council. The dotted lines represent trends in the number and the value of cases.



2.3. In line with the CFaCT Summary Report 2020, the blue dotted trend line on the chart above shows a steady decline in the total number of cases compared to recent years.

2.4. In 2021/22 the value of frauds prevented increased due to two unsuccessful attempts to have fraudulent payment requests processed, totalling £527,040. Both attempts were blocked by Business Support Centre controls, and controls have been enhanced since these attempts were made. Further work is planned in 2022/23 in this area as this is seen to be a growing threat.

2.5. A summary of the cases of potential fraud identified in 2021/22 is presented in the following table.

Nature of potentially fraudulent activity	No of Cases	Detection Source	Value Involved	Nature of Activity
Adults Social Care – Financial Assessments – deprivation of assets to avoid paying own care costs	26	Internal Controls through ASCH Reviewing Team	£116,396	People were charged the full costs of the service, saving the Council on Social Care costs

Nature of potentially fraudulent activity	No of Cases	Detection Source	Value Involved	Nature of Activity
Adults Social Care – Direct Payments Fraud and Misuse	11	Internal Controls – ACFS Annual Audits	£8,120	Recovered through ongoing payments
Adults Social Care – Ceased Direct Payments Misuse	1	Internal Controls – ACFS Annual Audits	£15,675	Invoice raised and recovery in progress
Pre-paid Financial Services Card – Cyber Crime	3	Information Sharing – Fraud network	£0	Losses prevented - compromised cards cancelled due to early intervention
Adult Social Care – Excessive Care Home provider claims	1	Internal Checking Controls	£2,000	Monies recovered
Adult Social Care – Deprivation of Assets - Theft from service user by family member	1	Internal Checking and Police Notification	£1,576	Invoice raised for recovery of care payment. Police prosecution for family member pending
Mandate Fraud	2	Internal Checking Controls	£527,040	Attempted change of bank details – detected and prevented
TOTALS	45		£670,807	
Blue Badge – Misuse	19 stolen 268 lost badges cancelled	Civil Parking Enforcement Officers	£10,925 ¹	Misuse resulting in the cessation of pass
Disabled/Over 60's Concessions	82 stolen 1882 Lost		£1,968 ²	Lost or stolen badges are not necessarily used fraudulently
Cyber Security	numerous daily attempts	ICT controls	Not quantified	External and internal defence systems to prevent and detect attacks

- 2.6. In compliance with the Transparency Code, NCC publishes summary information on its website each year concerning its arrangements for countering fraud. This includes the number of fraud cases investigated each year. The published details for the past three years are shown below.

Information	2019/20	2020/21	2021/22
No. employees involved in fraud investigation	29	29	26
No. professionally accredited fraud specialists	1	1	1
Estimated Cost of employee time investigating fraud	£159,167	£180,607	£173,339
No. fraud cases investigated	81	62	45

¹ Based upon NFI theoretical estimates of prevented fraudulent use being £575 per blue pass

² Based upon NFI theoretical estimates of prevented fraudulent use being £24 per concessionary pass

- 2.7. The cost of staff actively involved in identifying and preventing fraud has decreased since the previous year, partly due to the National Fraud Initiative (NFI) exercise taking place bi-annually and partly due to other work pressures and recovery from Covid-19 taking priority.

National Fraud Initiative

- 2.8. The 2020-22 exercise is still in progress, however, the key statistics for Nottinghamshire for the 2018-20 exercise were:



28 reports matching NCC data against data from DVLA, DWP, mortality data, etc



14,121 total matches
1,551 high priority matches



NCC staff examined 8,026 matches on a risk basis and 1 case remains in progress



£64,154 of outcomes identified

- 2.9. The 2018-20 NFI national outcomes (July 2020, compiled by the Cabinet Office), in the headline categories of fraud for County Councils are shown below, alongside the NCC potential fraud/error outcomes.

Category	NFI 2018-20	NCC 2018-20	NCC 2020-22
Pension Overpayments (Deceased)	£55.5m	£83,028	No outcomes yet to report. 542 from 1557 (35%) matches checked to date
Personal budgets	£2.1m	£2,049	Not included in the latest matching exercise due to NFI GDPR issues
Trade Creditors	£5.1m	£0	£81,640
Payments to Private Care Homes for Deceased Persons	£5.1m	£6,409	Not included in the latest matching exercise due to NFI GDPR issues
Total	£67.8m	£91,486	£81,640
Other significant estimated results			
Blue Badges cancelled or withdrawn (no's)	46,750	576 cases	479 cases – with a potential value of £275,425
Concessionary Travel Passes Cancelled (no's)	151,815	115 cases	1,839 cases with a potential value of £44,136
Theoretical estimates based on average value of cases above (not previously estimated in this way before) – see footnotes 1&2.		691 cases	£319,561

3. Fraud Risk Assessment

- 3.1. Internal Audit annually reviews and updates the Council's FRA to assess the nature of fraud and corruption threats to the Council. The assessment draws on intelligence from a variety of sources:
- National Anti-Fraud Network and National Fraud Intelligence Bureau alerts which are routinely received, reviewed and disseminated by Internal Audit.
 - Liaison with the Midland Counties Counter Fraud Group – Knowledge Hub. This group is used as a forum to raise questions and share knowledge of potentially fraudulent activity or issues that have arisen at other local authorities.
 - National publications, professional bodies such as CIPFA & IIA.
 - Discussion with service managers across the Council to understand inherent and residual risks facing services vulnerable to fraud.
 - Head of Internal Audit's knowledge and risks from core systems and the assurance mapping process.
 - Analysis of incidences of suspected cases at the Council.
- 3.2. The latest review of the FRA, highlights the following threats as potentially having the highest impact at the Council:

External Threats

- Bank mandates – attempts made to make changes to supplier bank accounts
- Pension fund – continuation of payments in respect of deceased persons
- Blue badges – invalid use of parking permits
- Adult social care – personal budgets
- Adult social care – misuse of direct payments
- Adult social care – deprivation of assets to increase the Council's contribution for care costs
- Procurement fraud – during the contract management stage of activities and including invoices for services not delivered, received or sub-standard
- Social Engineering – Phishing, vishing etc to obtain data by deception

Internal Threats

- Collusion – two or more employees acting together to nullify internal checks
- Payroll – submission of false claims for overtime, allowances and expenses
- Procurement – abuse of procurement processes and procurement cards
- Payments – abuse of position and opportunity

4. How is Nottinghamshire County Council responding to fraud risk?

Governance and Members

- 4.1. The Council's Governance and Ethics Committee continues to provide the focal point for member engagement with the counter fraud agenda. Members oversee the review of policies and guidance material that underpin the delivery of the counter fraud agenda across the Council, and this continued through 2021/22:

- Counter Fraud & Corruption Policy and Fraud Response Plan
- Anti-Money Laundering Policy
- Self-assessment against the Fighting Fraud & Corruption Locally checklist
- Whistleblowing policy

Internal Audit and Counter Fraud

4.2. The Internal Audit Team incorporates pro-active and responsive counter-fraud work in its termly plans:

- Helping to promote a counter-fraud culture - awareness-raising articles in 'Team Talk' and 'Intranet News' over the year, and especially to coincide with the International Fraud Awareness Week in November. Since the relaunch of online counter-fraud training amongst Council staff in October 2021, 299 people have completed the course.
- Detective checking – through application of its data-enabled audit strategy and use of data analytic software as part of its routine audit work.
- Prompting targeted checks by others - through the dissemination of information and advice
- Data-matching and data-washing – co-ordination of the Council's participation in ongoing NFI and NFI Recheck exercises, along with engagement with the national Government Agency Intelligence Network (GAIN) to check for any links with known serious and organised crime. Results of the latest exercise in May 2022 have come back without any concerns in relation to organised crime and the benefit of further checks will be considered.
- Continuous assurance – routine data monitoring for indicators of fraud in a range of corporate systems and processes.

Business Services Centre (BSC)

4.3. A range of fraud preventative activities are carried out by the BSC as part of the recruitment process and the setting-up of new employees on the payroll:

- Recruitment – applying checks for new employees on the right to work in the UK, along with workflow prompts for managers to complete ongoing checks for those with temporary leave to remain in the UK. Carrying out Disclosure and Barring Service (DBS) checks (including identity checks) for prescribed categories of employee and improving reference response rates through the use of the online application. Strong controls are in place as demonstrated through the year.
- Mandate fraud controls – strong controls to counter attacks aimed at the accounts payable process. As demonstrated during the year this has stopped two payments totalling £527,040. It is a concern that these are examples where fraudsters have infiltrated vendor systems to attempt to change bank details. Whilst the Council's controls remain resilient to these threats, in the last financial year approximately 250 bank account amendments have been made in BMS for various vendors and because of these attempts, the Council's controls have been enhanced. Further work is also planned to review third party controls and raise awareness to suppliers of these risks.
- Separation of duties and access to core systems – software enabled, continuous monitoring of activity in the Council's SAP accounting system to routinely detect transactions that warrant investigation. A new, annual check has been rolled out to require managers to validate continuing staff access requirements.

ICT

- 4.4. The cyber security agenda continues to make national headlines, and this is a primary area of focus for the ICT team:
- Risk management process – alignment with the National Cyber Security Centre (NCSC) and Local Government Association (LGA) Directives and Best Practices
 - Digital and physical asset protection measures – these continue to successfully detect and deflect a variety of cyber related virus, malware and other malicious attacks against the Council
 - IT security policies - reviewed annually
 - External accreditation – in-progress - re-certification against Cyber Essentials, the Public Services Network Code of Connection and the Data Security Protection Toolkit.

Adult Care Financial Services Department (ACFS)

- 4.5. ACFS has developed a proactive approach and has in place rigorous measures to address the threat of losses due to the misuse of direct payments and intentional deprivation of assets:
- Direct Payment Policy, Agreement and staff guidance – embedded in the department's processes
 - Direct Payments Auditing and ACFS escalation process – now resumed following the diversion of resources to deal with the pandemic emergency. Over 80% of financial audits for 2021/22 have been completed to date and are once again identifying cases of misuse. This has resulted in prompt recovery through ongoing payments and invoices being issued for repayment where service has ceased.
 - Deprivation of assets - cases continue to be identified, resulting in recovery action being undertaken in accordance with Section 70 of the Care Act 2014.

Risk & Insurance

- 4.6. The Risk and Insurance Team continues to use a 48-point checklist to screen claims on a risk basis to detect false, exaggerated and potentially fraudulent cases. During 2021-22 the team completed the Council's own Fraud Awareness Training. In addition, key officers within the team also took part in a virtual refresher training session hosted by Zurich Municipal which focused on the risk of fraudulent personal injury claims resulting from slips and trips. Although no fraudulent claims were identified, 855 claims were successfully defended during the year with a savings value of £2.5m.

Schools Finance

- 4.7. The work of the Schools Finance Team makes an important contribution to the counter-fraud activities:
- Advice to schools on finance and governance - including liaison with Internal Audit in relation to potential fraud cases
 - Fraud alerts – dissemination of intelligence about new and emerging fraud threats for schools through the Schools Portal
 - Routine audits – audits of schools on a five-year basis incorporate checking controls designed to mitigate potential fraud risks. Findings from individual reviews provide intelligence to identify areas of fraud risk and to disseminate warnings to others.

Procurement

- 4.8. The Procurement Team have robust processes and due diligence in place at the tendering stage to counter fraud.

Blue Badges

4.9. Activity to identify the misuse of Blue Badges continues. The focus for counter-fraud activity in this area includes the following:

- Issue of Penalty Charge Notices where Enforcement Teams identify incorrect use of badges - NCC has lobbied Central Government to consider making enforcing Blue Badge fraud simpler
- Vigilance in identifying suspicious applications for badges, including repeated claims of badges being lost
- Liaison with the City Council and Police Compliance and Fraud Officer to share intelligence of badge misuse
- Participation in the NFI to identify and cancel active badges linked to deceased badge holders.

Concessionary Passes

4.10. Key actions to counter the fraudulent use of concessionary travel passes centre around failure to notify the Council of the death of a pass holder:

- Participation in the bi-annual NFI process
- Linking in with the Council's 'Tell Us Once' process to facilitate notification of the death of a pass holder, and establishing closer links with the Registration Service
- Rolling out a hot-listing system which will enable remote cancellation of any badges that should no longer be in use in 2022.

5. Counter Fraud Priorities for 2022/23

5.1. The following sets out priorities for 2022/23, all of which will be led by Internal Audit.

Action	Timescale
Pro-active work with the Travel & Transport team to respond to the threat of Blue Badge and Concessionary Travel Fraud, including an audit of the notification process (Tell Us Once) and the hot-listing system once established.	March 2023
Review progress with actions from the FFCL self-assessment and address outstanding actions.	Reviewed November 2021 and continues to March 2023
The Business Service Centre to work with Internal Audit to develop additional in-house options to identify duplicate payments using Excel and IDEA Audit software.	September 2022
A piece of work is currently underway to complete a root-case analysis of past fraud cases and identify any key control risks to enhance further learning.	September 2022
Review internal and external controls in relation to preventing mandate fraud.	March 2023

21 July 2022

Agenda Item: 6

REPORT OF SERVICE DIRECTOR FOR FINANCE, INFRASTRUCTURE & IMPROVEMENT

INTERNAL AUDIT PROGRESS TERM 3 2021-22 AND TERM 2 PLAN 2022-23

Purpose of the Report

1. To inform Members of the work carried out by Internal Audit in Term 3 of 2021/22.
2. To consult with Members on the Internal Audit Plan for Term 2 of 2022/23.

Information

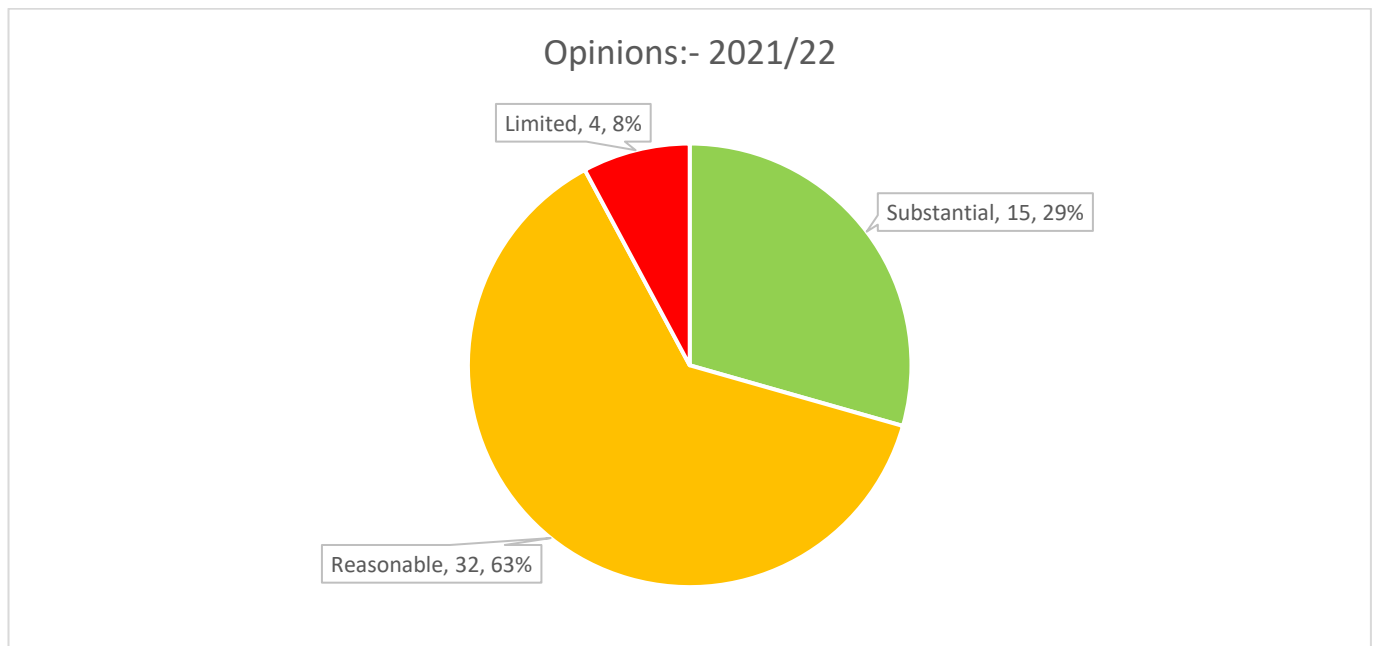
Internal Audit's work in Term 3 2021/22 – December 2021 to March 2022

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 2021/22, to the end of Term 3.

Chart 1- Opinions to Term 3 2021/22



5. In terms of the work completed on the County Council's services and systems, **Chart 2** analyses the opinions issued in Term 3 2021/22 by service area and level of assurance.

Chart 2- Opinions for Term 3 2021/22

	LIMITED ASSURANCE	REASONABLE ASSURANCE	SUBSTANTIAL ASSURANCE
COUNCIL-WIDE		Purchase Cards	
CHILDRENS PLACE			Regional Adoption
ADULTS		Mental Health	
CHIEF EXEC'S			LGPS Investments
			CIPFA Code
School Audits	3 Visit *	19 Visits	7 Visits

*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.

6. The significant pieces of assurance work during Term 3 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.
 - Annual Governance Statement – to provide assurance over governance arrangements across the Council to support the financial statements.

- Regional Adoption Agency – provided assurance over existing arrangement for the agency and charging methodology.
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 in response to the Covid19 pandemic. The following summarises the key areas of activity:
- Children's Member Review – work with Member and Officer Groups to review expenditure within Children's Services.
 - Household Support Grant – advice on internal controls and monitoring arrangements to disseminate the grant.
 - Regional Adoption Agency – advice on options for revisions to the charging methodology across the agency.
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 3. The following summarises the key areas of activity:
- Fraud Training Materials – dissemination of revised fraud awareness training and awareness material.
 - 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 3 the following grant claims were certified:
- Beeston Youth Accounts &
 - Green Home Grant.

Internal Audit Performance

13. **Appendix 1** provides an update on the Section's performance in Term 3 against its key indicators. It includes the following charts to depict progress against the Term 3 Plan, expressed in terms of the following:
- Inputs – the number of audit days delivered against the Term 3 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 have been hit hard by the sudden death of the Head of Internal Audit and the impact of staff moving to interim roles to provide cover. On a more positive note, the team's two Internal Audit Apprentices have recently passed external examinations. This success will enable them to continue with the next apprentice level and professional training. 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. The latest Graduate has taken up a placement with the Team and has progressed through induction and training and has started to undertake productive planned activities. Staffing productive days are on track but are expected to reduce in Term 2 reflecting the absence of the Head of Internal Audit, retirement of the Audit Supervisor and current staff providing interim cover on a temporary basis until permanent recruitments have been completed.
- Assurance and Advisory activities – the completion of internal audit activity reflects the impact of the pandemic on services and the agile approach adopted. Term 3 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 2 plan for 2022-23.
- Implementation rates for actions arising from audits remain below target but have improved for Priority 1 actions, as highlighted in the report to Committee in June 2022. The next update on this is scheduled for December 2022.

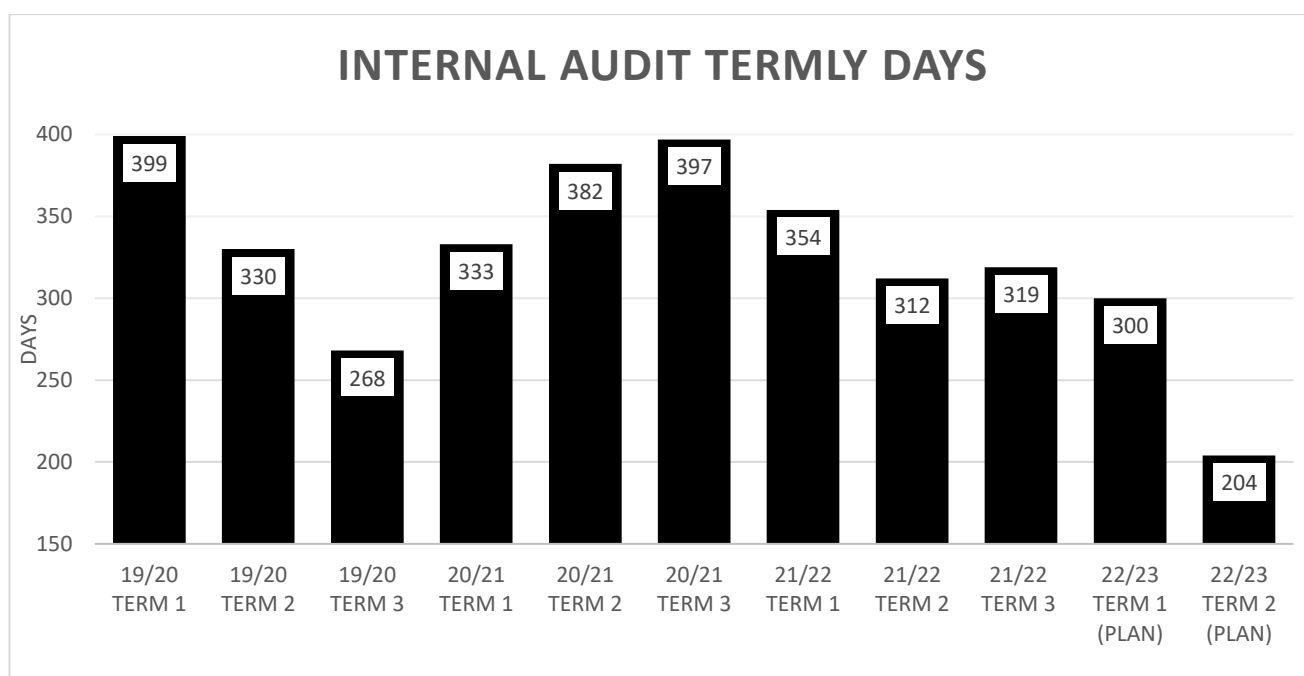
Proposed Internal Audit Plan for Term 2 2022-2023

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 2 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 2, and it is summarised in the following table.

Assurance from Audit Coverage	Days	Outputs
Second Line Assurance work	25	1
Opinion Assurance	79	5
Advice / Consultancy Assurance	59	1
Counter Fraud Assurance	21	4
Certification Assurance	20	4
Total	204	15
External Clients (Notts Fire & Rescue Service)	45	
Grand Total	249	

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 1 (April 2022 – July 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 2 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 3 and the planned coverage of Internal Audit's work in Term 2 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 10/06/2022)

25. No decision is required to be made in respect of this report.

Financial Comments (RWK 13/06/2022)

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

Background Papers and Published Documents

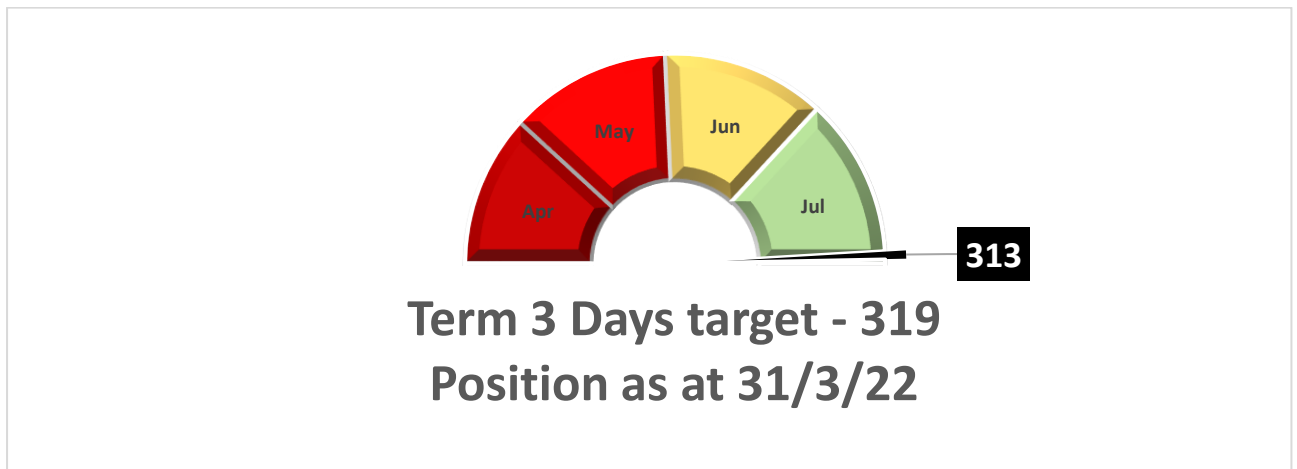
Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

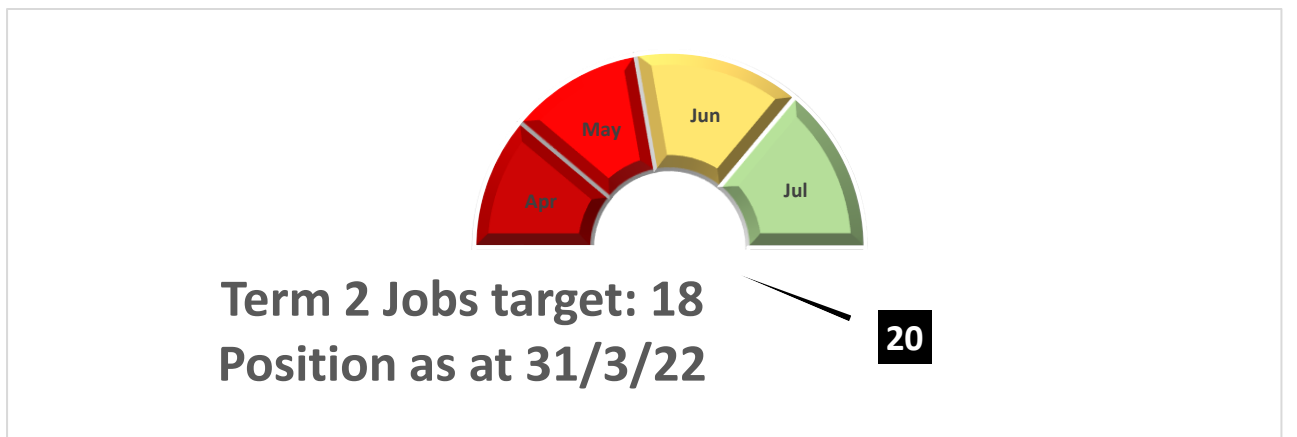
Electoral Division(s) and Member(s) Affected

- All

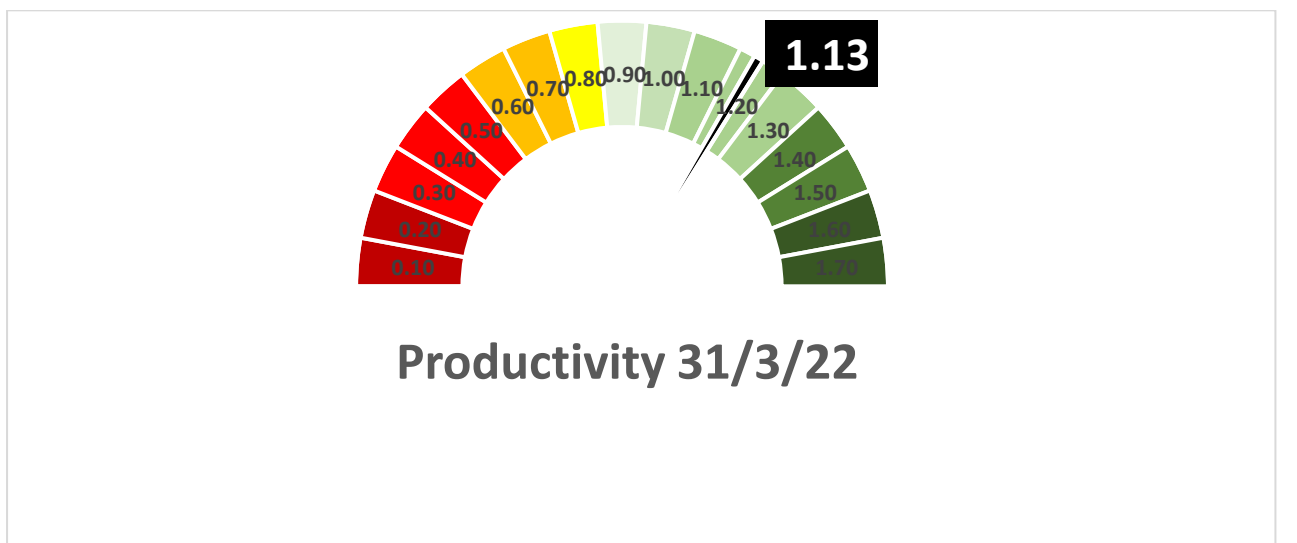
Term 3 – Inputs – Days Delivered



Term 3 – Outputs – Jobs Completed



Term 3 – Productivity Indicator



Key Performance Indicators

Performance Measure/Criteria	Target	Outcome in Term 3
1. Risk-aware Council		
Completion of Termly Plan – Days	90%	✓ 98%
- 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	✓ Fraud Progress Report – January 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 9 June 2022 for 2021/22 actions)	75%	✓ 75% Priority 1 ✗ 65% 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)	✓ 3.72

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 2				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.
Action Tracking	H	1			30					Follow-up work : six monthly review of the implementation of management actions agreed from previous audits
Cabinet/Scrutiny Governance Framework	H	0				5				Advice/Consultancy : Provide advice and insight to the revised Council Cabinet and Scrutiny arrangements and supporting governance framework for its operation.
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 - Bank Mandates Third Parties	H	1					12			Counter fraud : Identify areas for subsequent counter fraud activity as a result of the Fighting Fraud & Corruption Locally assessment and completion of the International Fraud Awareness Week.
Pro-active counter-fraud – NFI 2018-20 - Review of Matches and 2020-21 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
Certification										
Platt Lane Playing Fields and Beeston Youth & Community Centre	H	2						6		Certification - Audit certificate for annual accounts
Homes for Ukraine	H	1						8		Certification - Completion of in scheme assurance checks to provide assurance for the quarterly and annual reporting and sign off.
Bus Operators Grant	H	1						6		Certification - Audit certificates for use of bus operators grants
Assurance										
ICT Risk Plan - Backup and Recovery Processes	H	1			10					ICT Risk Based : Undertake a review from the current ICT Risk assessment completed by Audit One in relation to Backup and Recovery processes to ensure effective and timely arrangements and recovery.
Adults - Ombudsman Complaints	H	1			8					Intelligence based : Continue with the review of the approach to communications and application on lessons learnt from cases and outcomes from Ombudsman reporting.
Climate Change	H	1				8				Intelligence based : Continuation of input to the Council's planning, monitoring and reporting arrangements to progress its stated objectives with regard to the climate agenda through initial monitoring of the framework established with reference to NAO guidance and subsequent deeper dive activities within subsequent Terms.
Pensions - Non LGPS Investments	H	1			5					Core process based : Finalise the review of Pension Fund investments that are not managed through the LGPS Central Ltd following completion of the Partner audit review.
Workforce Strategy	H	1			8					Core process based : Complete the assurance that objectives and plans for meeting the future requirements for workforce skills and capacity are progressing in line with project delivery aims.
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				25	79	13	21	20		
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.

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	
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		15		25 204	79	59	21	20	
Forward Plan for assurance in subsequent Terms									
Property Sales	H								Intelligence based: Review of changes to procedures recommended within the previous audit to provide assurance over the operation of new controls.
PFI - arrangements for the exit	H								Intelligence based: Arrangements in place for the completion, exit and hand back of arrangements under PFI schemes
Culture	H								Core process based: follow-on from previous review of procedures, guidance and protocols - potentially to link in with other 3rd line assurance.
Cabinet and Scrutiny Compliance	H								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.
Thematic Review of Schools Finances - NAO Sustainability	H								Intelligence based: Undertake a review of processes within schools based on risks emerging from the NAO guidance and sustainability.
Contract Management	H								Intelligence based: Undertake a review of newly implemented processes to drive and support the VFM Agenda.
Budget Setting & MTFS	H								Intelligence based: Undertake a review of robustness and consistency of budget setting processes and assumptions.
Social Care - Future Needs & Impact	H								Intelligence based: 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								Intelligence based: Undertake a review as part of smarter working the management of assets and the realisation of capital receipts.
ICT Asset Controls	H								ICT Risk Based: Undertake a review of asset control especially in relation to mobile devices and remote working environments.
ICT Networks	H								ICT Risk Based: Undertake a review of the processes for establishing and the robustness of networks WAN/LAN.
Use of Financial Waivers	H								Intelligence based: Undertake a review of the use and application of waivers following reports from Nottingham City Council Internal Audit.
Use of Agency Staffing	H								Intelligence based: Undertake a review of the use of agency staffing contracts across the Council and especially in high use areas.
Regeneration Relationships	H								Intelligence based: Undertake a review of relationships with developers and economic developments at a Local and national Level.

21 July 2022**Agenda Item: 7****REPORT OF SERVICE DIRECTOR – FINANCE, INFRASTRUCTURE AND
IMPROVEMENT****INFRASTRUCTURE ASSETS REPORTING ISSUES****Purpose of the Report**

1. To inform Members of the issues surrounding the accounting treatment of infrastructure assets.
2. Seek approval to delegate authority to the Section 151 Officer to approve amendments to the accounting policies for 2021/22 relating to infrastructure assets.

Information

3. In March 2022, the CIPFA / LASAAC Local Authority Code Board became aware of issues which arose in early March relating to the reporting of infrastructure assets. These issues have led to the delay in signing off a number of 2020/21 Local Authority audits.
4. Infrastructure assets are inalienable assets which means that expenditure on them is only recoverable by continued use of the asset created (i.e. there is no prospect of sale or alternative use). Examples of infrastructure assets include carriageways, bridges, street lighting, street furniture and traffic management systems.
5. The issues raised by auditors relate to subsequent expenditure on infrastructure assets and specifically whether local authorities should be assessing if there is any undepreciated cost remaining in the balance sheet for replaced components that needs to be derecognised when any subsequent expenditure is added. This may also lead to issues relating to the reporting of gross historical cost and accumulated depreciation.
6. The issues arise principally because of a lack information availability relating to these assets and the difficulty of generating information which is decision useful for infrastructure assets and meets the needs of accounting standards.
7. In an effort to temporarily resolve the issue the CIPFA / LASAAC Local Authority Code Board have undertaken an urgent consultation on temporary proposals to update the Code of Practice on Local Authority Accounting in the United Kingdom for infrastructure assets. A Task and Finish Group has also been established to assist with the resolution of this issue and to consider the consequences of proposals.

8. This issue is a complex, technical accounting issue. A temporary solution has been proposed with changes to the Code, including proposals to:-
- a. Confirm the accounting consequences of derecognition i.e. that the effect on the carrying amount is nil (on the presumption that replaced parts are fully depreciated)
 - b. Temporarily adapt the code to remove the reporting requirements for gross historical cost and accumulated depreciation
 - c. Provide extra guidance on how depreciation may be applied for infrastructure assets
9. Once the confirmation of Code amendments have been announced, this temporary solution will require there to be amendments to the Accounting Policies 2021/22 that were approved at Governance and Ethics Committee in April 2022. It is proposed that delegated authority is given to the Section 151 Officer to approve these amendments.

Other Options Considered

10. The accounting policies will need to be amended in line with further guidance from CIPFA / LASAAC to ensure that Nottinghamshire County Council's 2021/22 Statement of Accounts are in compliance with the CIPFA Code of Practice on Local Authority Accounting.

Reason/s for Recommendation/s

11. To ensure that the Authority's Statement of Accounts for 2021/22 are produced in line with the CIPFA Code of Practice on Local Authority Accounting

Statutory and Policy Implications

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

Financial Implications

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

RECOMMENDATION/S

- 1) That Members note the issues surrounding the accounting treatment of infrastructure assets.
- 2) That authority to approve amendments to the accounting policies for 2021/22 regarding infrastructure assets be delegated to the Section 151 Officer in line with the updated Code of Practice on Local Authority Accounting in the United Kingdom.

Nigel Stevenson
Service Director – Finance, Infrastructure and Improvement

For any enquiries about this report please contact:

Glen Bicknell, Senior Finance Business Partner, Financial Strategy and Compliance.

Constitutional Comments (12/07/2022 GR)

14. Pursuant to the Nottinghamshire County Council Constitution this Committee has the delegated authority to receive this report and make the recommendations contained within this report.

Financial Comments (17/06/2022 GB)

15. The financial implications are set out in the report.

Background Papers and Published Documents

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

- None

Electoral Division(s) and Member(s) Affected

- All

21 July 2022**Agenda Item: 8****REPORT OF THE SERVICE DIRECTOR, CUSTOMERS, GOVERNANCE AND
EMPLOYEES****WORK PROGRAMME****Purpose of the Report**

1. To review the Committee's work programme 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 13 JULY 2022)

<u>Report Title</u>	<u>Brief Summary of agenda item</u>	<u>Lead Officer</u>	<u>Report Author</u>
September 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
Local Government & Social Care Ombudsman Annual Review letter	To receive the Annual Review letter of the Local Government and Social Care Ombudsman	Marie Rowney	Richard Elston
Financial Regulation Waivers 2021/22	To report on the number and value of financial waivers granted through 2021/22	Nigel Stevenson	Kaj Ghattaora
Corporate Risk Management Update	To consider the updated corporate risk register and the Council's arrangements for corporate risk management	Nigel Stevenson	Keith Palframan
Update on use of resources by Councillors	Annual update to the Committee on the use of resources by Councillors	Marjorie Toward	Keith Ford
Rushcliffe Community Governance Review – Upper Saxondale	To agree the response to the second stage of consultation of Rushcliffe Borough Council's Community Governance Review on the Upper Saxondale area	Marjorie Toward	Jo Toomey
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	Glen Bicknell
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
Strategic Internal Audit Plan	Page 69 of 72	Nigel Stevenson	Simon Lacey

Governance Update	To consider progress against the Governance Action Plan for 2022/23	Nigel Stevenson	Simon Lacey
Whistleblowing Policy Review	To consider the outcome of the review	Marjorie Toward	Heather Dickinson / Catherine Haywood
Councillor Code of Conduct Review	To consider the findings of the working group	Marjorie Toward	Heather Dickinson
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
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
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
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
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
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
Whistleblowing update	To update the committee on whistleblowing activity during 2022	Marjorie Toward	Heather Dickinson
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
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
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
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
Update on the use of the Councillor's Divisional Fund	To consider the annual update	Marjorie Toward	Keith Ford
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 Page 71 of 72	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 2 2022/23	To consider proposed audit coverage for Term 2	Nigel Stevenson	Simon Lacey