

## **Governance and Ethics Committee**

**Wednesday, 06 January 2021 at 10:30**

Virtual meeting, <https://www.youtube.com/user/nottsccl>

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### **AGENDA**

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|----|--|-----------|
| 1  | Minutes of last meeting held on 25 November 2020   | 1 - 4     |
| 2  | Apologies for Absence  |           |
| 3  | Declarations of Interests by Members and Officers:- (see note below)<br>(a) Disclosable Pecuniary Interests<br>(b) Private Interests (pecuniary and non-pecuniary) |           |
| 4  | Local Government and Social Care Ombudsman Decisions - November 2020   | 5 - 52    |
| 5  | Counter Fraud Progress Report  | 53 - 66   |
| 6  | European Union Transition Risk and Register  | 67 - 78   |
| 7  | Regulation of Investigatory Powers Act 2000 - Annual Report 2019-20  | 79 - 82   |
| 8  | Appointment of Independent Remuneration Panel Members  | 83 - 86   |
| 9  | Local Government Association Final Model Code of Conduct for Councillors   | 87 - 108  |
| 10 | Work Programme   | 109 - 112 |

## **Notes**

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

Customer Services Centre 0300 500 80 80

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

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

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



Meeting **GOVERNANCE AND ETHICS COMMITTEE**

Date **Wednesday 25 November 2020 (commencing at 10.30 am)**

**membership**

Persons absent are marked with 'A'

**COUNCILLORS**

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

Nicki Brooks  
Steve Carr  
Kate Foale **A**  
John Handley  
Errol Henry JP

Rachel Madden  
Phil Rostance **A**  
Keith Walker  
Martin Wright

**SUBSTITUTE MEMBERS**

Richard Butler for Phil Rostance  
Pauline Allan for Kate Foale

**OFFICERS IN ATTENDANCE**

Glen Bicknell                      Chief Executive's Department  
Heather Dickinson  
Rob Disney  
Keith Ford  
David Hennigan  
Jo Kirkby  
Simon Lacey  
Keith Palframan  
Nigel Stevenson  
Marjorie Toward

**INDEPENDENT PERSONS**

Ian Bayne  
Craig Cole  
Rob White

**EXTERNAL ATTENDEES**

John Gregory                      Grant Thornton  
Lorraine Noak

**1. MINUTES**

The Minutes of the last meeting held on 12 October 2020, having been previously circulated, were confirmed and signed by the Chairman.

## **2. APOLOGIES FOR ABSENCE**

The following apologies for absence were reported:-

Councillor Kate Foale – other County Council business  
Councillor Phil Rostance – other reasons

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

None

## **4. LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN (LGSCO) DECISIONS – SEPTEMBER AND OCTOBER 2020**

Jo Kirkby, Team Manager, Complaints and Information introduced the report which informed Members of the latest complaint decisions by the LGSCO.

### **RESOLVED: 2020/042**

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

## **5. STATEMENT OF ACCOUNTS 2019-20**

Glen Bicknell, Senior Accountant introduced the report which presented the draft Statement of Accounts 2019-20 and sought a delegation of authority to the Section 151 Officer in consultation with the Chair of the Committee to approve this along with the required letters of representation.

John Gregory, Director of Grant Thornton (the Council's external auditors) outlined the key issues from the Audit Findings update appended to the report.

### **RESOLVED: 2020/043**

- 1) That the contents of the External Audit Report 2019-20 be noted.
- 2) That approval of the Statement of Accounts 2019-20 and the letters of representation be delegated to the Section 151 Officer in consultation with the Chair of Governance and Ethics Committee.

## **6. INTERNAL AUDIT 2020-21 TERM 3 PLAN**

Simon Lacey, Audit Team Leader, introduced the report which provided an update on plans for Term 3 and progress with Term 2 of the Internal Audit Plan.

### **RESOLVED: 2020/044**

- 1) That no further actions or reports were required arising from the contents of the report.
- 2) That the planned coverage of Internal Audit's work be progressed to help deliver assurance to the Committee in priority areas.

## **7. COMMITTEE ON STANDARDS IN PUBLIC LIFE – PROGRESS WITH IMPLEMENTATION OF BEST PRACTICE RECOMMENDATIONS**

Heather Dickinson, Group Manager – Legal and Democratic Services, introduced the report which sought approval for the Council's response to the Committee on Standards in Public Life's request for an update with the implementation of the best practice recommendations.

The Council's appointed Independent Persons raised the following issues with the proposed response:

- it was felt that it would be helpful to define what was meant by 'regularly' seeking views in relation to reviewing the Council's Code;
- it would be helpful for the Code to be made readily accessible rather than available only upon request;
- the Independent Persons were happy to be consulted about whether an allegation should proceed to formal investigation, depending on the Council's preferred approach to this issue. It would be helpful if the Independent Persons could be notified about complaints received.
- it would be helpful to include a definition of bullying and harassment within the Code and it was acknowledged that already established legal definitions should be utilised.

During discussions, Members raised the following points for further consideration and implementation:

- following the publication of the new Model Code of Conduct by the Local Government Association, it would be helpful to establish a cross-party working group to consider the implications for the Council's own Code, including the issue of reporting from separate bodies such as arms-length management companies;
- that a review of the Code could be scheduled within the Committee's work programme on an annual basis with a report only presented to Committee in those years in which issues or proposed changes need ed to be shared;
- that the word 'trivial' in relation to complaints be replaced with 'minor'.

### **RESOLVED: 2020/045**

- 1) That the update response be amended to reflect the issues raised by the Independent Persons and Members and submitted to the Committee on Standards in Public Life.
- 2) That a further report be brought to Committee after publication of the revised Model Code of Conduct, outlining the next steps for implementation of the Model Code in Nottinghamshire and to enable consideration of any further changes required to the Council's Code of Conduct.

## **8. MEMBERS COMMUNICATION AND ENGAGEMENT PROGRAMME PROGRESS UPDATE**

Heather Dickinson, Group Manager – Legal and Democratic Services, introduced the report which updated the Committee on progress made across the Programme, with specific focus on the actions relating to training development.

During discussions, Members requested that further consideration be given by the previously established member working group to the issue of how best to provide support to Members with their learning and development needs – for example, through dedicated contacts, political group support officers or members of the Governance Team.

### **RESOLVED: 2020/046**

- 1) That the overall approach being taken towards improving member training and development be approved.
- 2) That no further topics be added to the draft induction and training programme at this stage.
- 3) That the member working group undertake further detailed work on the induction and training programme; consideration of a survey of members' needs; best use of, and access to, available training budgets; and design, accessibility and content for the learning portal; and report back to a future meeting of the Committee early in 2021.

## **9. WORK PROGRAMME**

### **RESOLVED: 2020/047**

That the work programme be agreed, with no further changes required.

The meeting closed at 12.05 pm.

CHAIRMAN

**6 January 2021****Agenda Item: 4****REPORT OF THE SERVICE DIRECTOR FOR CUSTOMERS, GOVERNANCE  
AND EMPLOYEES****LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN DECISIONS  
NOVEMBER 2020****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 up to 3<sup>rd</sup> December 2020.

**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 25<sup>th</sup> November 2020.
3. The LGSCO provides a free, independent and impartial service to members of the public. It looks at complaints about Councils and other organisations. It only looks at complaints when they have first been considered by the Council and the complainant remains dissatisfied. The LGSCO cannot question a Council's decision or action solely on the basis that someone does not agree with it. However, if the Ombudsman finds that something has gone wrong, such as poor service, a service failure, delay or bad advice and that a person has suffered as a result, the LGSCO aims to get the Council to put it right by recommending a suitable remedy.
4. The LGSCO publishes its decisions on its website ([www.lgo.org.uk/](http://www.lgo.org.uk/)). The decisions are anonymous, but the website can be searched by Council name or subject area.
5. A total of 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 enquires into five complaints, the LGSCO decided not to continue with any further investigation for a variety of reasons as set out in Appendix A.
7. Full investigations were undertaken in five cases. Appendix A provides a summary of the outcome of each investigation. Some fault was found in four cases and 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. (Reference and page numbers refer to the information in Appendix B).

## **Statutory and Policy Implications**

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

## **Data Protection and Information Governance**

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

## **Financial Implications**

10. Financial remedy from the ASCH budget is £400, and £450 is split between C&F and the Complaints Team.

## **Implications for Service Users**

11. All 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**

That members consider whether there are any actions they require in relation to the issues contained within the report.

**Marjorie Toward**

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

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

Jo Kirkby Team Manager – Complaints and Information Team

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

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

## **Financial Comments (SES 09/12/2020)**

The financial implications are set out in paragraph 10 of the report. The payments totalling £850 will be made from existing departmental budgetary provision.

## **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/ANNEX PAGE No.	PROCEDURE	COMPLAINT SUMMARY	REASON FOR DECISION
3.11.2020	20 004 943, P 12	Adults	About care late father received and charging for the care.	Complaint late - no good reason to disapply the law.
5.11.2020	20 005 683, p14	Corporate	Employment /personnel matter	Out of jurisdiction
12.11.2020	20 004 333, p 26	Corporate	Approval to extend neighbours access driveway	Compliant late – no good reason to consider it now, unlikely to find fault.
13.11.2020	20 003 546, p28	Corporate	Delay in referring map modification order to Planning Inspectorate	Complaint withdrawn as referral now made.
23.11.2020	19 017 521, P 34	Childrens	Complainant cannot have unsupervised contact with her grandchildren	Insufficient evidence of fault by Council and an investigation would not lead to a different outcome.

### FULL INVESTIGATIONS

DATE	LGO REF ANNEX PAGE No	PROCEDURE	COMPLAINT SUMMARY	DECISION	RECOMMENDATION	FINANCIAL REMEDY
02.11.2020	19 006 810, P1	Adults	Detailed complaint about quality of residential care arranged for complainant's father	Fault with actions of care provider and as the council commissioned the care it is responsible.	Apology, Council and care provider to ensure it has made required changes.	£400 for distress and delay in provider responding to complaint.
06.11.2020	19 011 791, P15	Childrens	A number of complaints about the handling of a child protection referral.	Some fault by the Council – delay in sending the minutes of a strategy meeting, not escalating the complaint to stage 2 of the process, not asking if complainant needed reasonable adjustments.	Apology; ensure customers have the opportunity to identify any adjustments they might need.	£450
09.11.2020	19 020 882, P 20	Childrens	Processes and information in two child and family assessments	Council not at fault		
19.11.2020	19 020 842, p30	Adults	Way in which Council is meeting his care needs, and how it calculated his	Evidence of fault in relation to the financial assessment.	Council invite complainant to provide evidence if he pays for night time support	

			financial contribution to the care received.		and consider if it should treat this as DRE. Ensure complainant knows how to access emergency response service.	
27.11.2020	19 013 173, P 36	Adults	Council was wrong to decide complainant's mother-in-law deprived herself of assets to avoid paying care fees.	Fault in pursuing debt without a mental capacity assessment re ability to make financial decisions.	<ul style="list-style-type: none"> <li>• assess Mrs D's capacity re financial decisions;</li> <li>• consider if injustice has been caused;</li> <li>• write to complainant to confirm what action it will take regarding debt</li> <li>• remind staff of the importance of completing capacity assessments when there is doubt about a person's capacity.</li> </ul>	

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

Summary: Ms C complained about the temporary care her (late) father received in a nursing home, which was commissioned by the Council. The Ombudsman found there was fault with the care Mr F received, and the way in which the care provider responded to Ms C's complaint. This resulted in distress for which the Council has agreed to apologise and pay a financial remedy.

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## **The complaint**

1. The complainant, whom I shall call Ms C, complained to us on behalf of her (late) father, whom I shall call Mr F. Ms C complained about the residential respite care the Council arranged for her father between 3 and 14 February 2018. She complains that:
  - The home failed to provide the care her father needed for a pressure sore.
  - The home failed to puree his food and did not provide him with 'fork mashable' food.
  - The home failed to weigh her father and monitor his weight, as required.
  - The home failed to empty her father's catheter bag on time.
  - The home failed to properly process / deal with her complaint
2. Furthermore, Ms C complains the Council failed to share the findings with her from its safeguarding investigation into the above concerns.

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

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

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

## **How I considered this complaint**

6. I considered the information the information I received from Ms C, the Council and the NHS Tissue Viability Nurse service. I shared a copy of my draft decision statement with Ms C and the Council and considered any comments I received, before I made my final decision.

## **What I found**

### **Mr F's pressure sore care**

7. Ms C says her father had a pressure sore, which did not improve at home. As such, the district nurses advised that he should temporarily go into a care home so he could be turned every two hours, throughout the day and night. The stay would therefore hopefully improve his moisture lesion.
8. Mr F went into Greenacre Grange nursing home (run by Horizon Care (Greenacres) Limited) on 3 February 2018. On that day, the affected area was described in the home's records as 3 by 1 cm. Ms C says she explained to the home at the pre-admission assessment, how his wound should be cared for. The home was supposed to treat the sore/wound twice a day and turn him every two hours. However, Ms C says the home failed to do either. Ms C told me the home failed to turn him every two hours, because family members were there for hours during which the home did not turn him. She also said that family members left a towel rolled up at the side of him at night and saw the next morning that it hadn't moved. She said the family did this to see if staff repositioned her father at night.
9. Ms C also told me that:
- Her father's wound wasn't treated with cream for the first five days.
  - The home did not use sterile water and washed the open wound with tap water and toilet paper instead. The family witnessed this on one occasion and the nurse told them the home did not have sterile water. When her father was at home, he was prescribed sterile water, which the nurses always used to wash him.
  - Furthermore, the family noticed that her father's air flow mattress was deflated on two occasions.
10. Ms C says that, as a result of the above failings, the moisture lesion deteriorated and became a level 3 or 4 pressure sore when the family took him back home after eleven days.
11. The home's Risk Assessment (pressure sore) states:
- Risk of developing pressure sores due to Mr F's poor condition, he is bed bound and unable to turn himself in bed.
  - Medical Condition and Associated Risks:
    - 1. Requires regular turns 2-hourly.
    - 2. Ensure air mattress is in place.
    - 3. Ensure air cushion is in place for the chair.

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4. Check the skin integrity regularly and apply creams to sacrum and dry areas
  5. Incontinent of faeces. Ensure skin is well cleaned and dried properly following episodes of faecal incontinence.
12. The home's care plan "Skin Integrity" added that:
- Staff to check Mr F's pressure areas at least daily and report any concerns to the Nurse on Duty
  - Refer to Tissue Viability Service if needed
13. Ms C says:
- Her mother spoke to the care home's nurse on 3 February 2018, the day of Mr F's admission. The nurse said the home did not have 'stuff to treat her father's wound'. Her mother said the family would bring pro shields cream the next day.
  - The family brought the cream the following day. She told the carers and put it in his room under the 'medication cupboard', so the nurse would see it when coming in; "you couldn't miss it".
  - Ms C says the family noticed on 5 February that the cream had not been moved. A nurse told her on 6 February that she had not seen the cream. By that time, his wound looked awful and had tripled in size. Ms C says it was washed and creamed three times a day at home.
14. The Council told me that a photo dated 5 February 2018, confirmed the wound was a moisture lesion. A record from 6 February said the home's nurse reported that a District Nurse was continuing to visit to monitor the moisture lesion. However, the local NHS Trust told me that district nurses did not visit the home during Mr F's stay, because he was in a nursing bed which meant the home's own nurses could provide any care required.
15. At a joint meeting on 6 February 2018, when pro shields was discussed, the record states that Ms C reported that her father had used this previously and found it to be very good in treating the sore. The record does not mention that Ms C reported any concerns at the meeting to the home or the social worker about the way the home had managed the affected area so far.
16. On 7 February 2018, Ms C witnessed that a staff member cleaned her father's affected area with normal water and toilet paper, rather than with sterile water. The District Nurse has since told the Council that if the wound was a moisture lesion, staff would not have had to use sterile water. At the meeting the previous day, the wound had been described as a moisture lesion.
17. The Council told me that the care home's records showed there are regular recordings by the care and nursing staff, that show they attended to Mr F throughout the day and night. It said that whilst the records did not always state the support provided was for pressure care, they evidenced that staff attended to Mr F at least every two hours. The notes also include several recordings that suggested staff applied barrier cream and changed dressings.
18. The care home's records state that:
- 4 February 2018
    1. There is no record in the morning to show if/that night staff turned Mr F every two hours.
    2. 4pm: "2 hourly positional changes performed".

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- 5 February
    1. 6am: *"Pressure area care was met by staff"*.
    2. There is no record in the afternoon / evening to show if/that day staff turned Mr F every two hours.
  - 6 February
    1. 5am: *"Pressure area care was met by staff"*.
    2. 7pm: *"Regular turn. Sacrum area grade 1 to 2. Medication given as prescribed"*.
  - 7 February
    1. 5am: *"Barrier cream applied. Pressure relief maintained"*.
    2. 4pm: *"Seen by Practice Nurse. Continue with barrier cream. She will discuss with GP if dressings are needed"*. No information about being turned by day staff regularly
  - 8 February
    1. 7am: *"Pressure area care maintained"*.
    2. 8pm: observation about the status of the wound. No information about being turned by day staff regularly
  - 9 February
    1. 7am: *"Pressure area care was met by staff, turns were maintained"*.
    2. 7pm: No information about being turned by day staff regularly. *"Sacral wound photographed and sent to Tissue Viability Service. Wound redressed as per plan"*. The TVN says it received a referral asking for treatment advice for category 2 pressure ulcer.
  - 10 February: No records of what happened.
  - 11 February
    1. There is no record in the morning to show if/that night staff turned Mr F every two hours.
    2. 2 pm: *He remains in bed. Dressing renewed. Had all his medication*. No information about being turned by day staff regularly.
  - 12 February
    1. 7am: Pressure area care was met by staff. Dressing intact and clean.
    2. *TVN responded to referral. Telephoned and spoke to the agency nurse in charge of the shift that day. The nurse advised that the patient had a category 2 pressure ulcer to the sacrum and assured RL that the patient as nursed on an alternating airflow mattress and was being repositioned on a 2-hourly basis. The nurse could not comment on the wound's appearance. TVN arranged a joint appointment with the care home for 14 February 2018 and advised the agency nurse upon assessing the wound, if they felt the visit was more urgent to contact the Tissue Viability Service prior to the visit.*
    3. There is no record in the afternoon / evening to show if/that day staff turned Mr F every two hours.
  - 13 February: No information about turning etc



- 14 February
  1. 5am: *"Turned two hourly last night and during the day"*
  2. The home did not provide a record that shows what was discussed during the TVN visit.
  3. NHS record: *Was informed on arrival that the patient was returning home. Patient's wife was present during the visit and expressed her concerns about the care her husband received at the home and that she was taking him home earlier than originally planned as a result. TVN confirmed the wound was a category 2 pressure ulcer with a combination of moisture. The patient's wife advised TVN, that the patient has an alternating airflow mattress and high-risk cushion at home and normally sits out. The patient's wife advised TVN that she used Proshield Foam cleanser and proshield plus barrier cream at home with good effect. She expressed to TVN whilst in the home, the patient spent all his time in bed and proshield plus barrier cream had not been applied for several days. The recommendations provided by TVN was to continue with the proshield foam cleanser and pro-shield plus barrier cream. TVN asked the nurse at the care home to refer the patient to the Community Nursing Team for support at home and advised the patient's wife that they will refer to the Tissue Viability Service again if they felt they required any further advice. Patient was then discharged from the Tissue Viability Service".*
- 19. Ms C says that, by the time the TVN checked her father's sore on 14 February 2018, the wound had become a grade 3-4. After the visit, the family took Mr F out of the home. The care home told the Council the following day that the TVN confirmed that the pressure area had improved. However, there is no evidence that shows the TVN said this.
- 20. A District Nurse spoke to the Council on 2 March 2018. The record states the lesion was a grade 3 pressure sore now. The family had shown the nurse a photo of the area from the date he returned home and reported it had improved since then.
- 21. The care provider responded to Ms C's complaint in June 2018. It said that:
  - Assessments and plans of care were in place for Mr F's pressure area care. The daily care records show the care to his pressure area has been documented. It also shows that appropriate steps were in place to care for his pressure area, including dressing changes, barrier creams and referrals to visiting professionals.
  - Visiting professionals were involved with Mr F's pressure sore care whilst he was at the home and made decisions about his treatment.
  - Whilst there was a deterioration of the area, the home took appropriate action, including seeking (and acting on) advice from external specialists.
  - The family did not raise any issues about Mr F's mattress. However, it accepts the mattress was not fully inflated on two occasions. It appears this was because a tube was disconnected from the machine, for which the home would like to apologise.
- 22. The care provider has since said that, at the time of Mr F's admission, it did not receive evidence that barrier cream had been prescribed to be used for Mr F.

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23. The Council has since said that the care home's pre-admission assessment should have discussed and highlighted, before Mr F's admission, what medication and creams he needed. The home's service user guide has been updated in the section on respite care.

### **Analysis**

24. The only reason for Mr F's stay at the home was to improve an affected skin area. He was also recorded as high risk for pressure sores developing. As such, I would have expected the care home to keep detailed records of the care it provided to Mr F's affected area. Detailed records are also important to enable senior staff / managers at the home to monitor that staff are implementing the care as per the care plan and assessments. However, I found that:
- Although there were some records that described the affected area, overall there was a lack of detail in terms of describing how the affected area looked and changed (compared to the day before)
  - There were some general references about pressure care "having been met". However, there were many instances when there was no record at all as to what (if any) pressure care was provided.
  - There is no actual evidence that shows at what times throughout the day or night Mr F was actually turned.
  - The home's risk assessment (pressure sores) says that staff should regularly apply creams to sacrum and dry areas. There is no evidence this was done during the first five days of his stay and/or that the nurse had decided this would not be necessary. Furthermore, there is insufficient evidence in the home's records to conclude how often this was subsequently done throughout the day.
25. Ms C also mentioned the home kept Mr F in bed "all the time", which increases the risk of deterioration, even though he would be taken regularly out of bed at home. She also said the family observed staff failing to turn Mr F during visits.
26. However, according to the records (including those from the NHS), the pressure sore was grade 2, not grade 3 or 4, when Mr F left the home.
27. As a result of the above, I am unable to conclude the care home managed Mr F's affected area in line with its risk assessment and care plan. As such, I have found that the home failed to provide the pressure area support Mr F needed during his stay, which may have contributed to a deterioration of the affected area.
28. I have not seen evidence that shows that, considering the stage the affected area was at the time, that staff should have used sterile water.

### **Mr F's dietary needs:**

29. Ms C said that:
- When her father's dementia deteriorated, he would constantly just chew his food without swallowing. The family therefore started to blend his food.
  - Her father did not have capacity to make decisions about the texture of his food. As such, the family told the home at the pre-admission assessment that her father could only eat (swallow) fork-mashable food. The assessor told the family this would not be a problem.
  - However, the home failed to do this. The family visited Mr F about two to three times a day, and especially at mealtimes. The family regularly raised a concern

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that Mr F did not receive this type of food, which the home ignored. This resulted in weight loss.

30. Ms C says the local NHS Trust completed an assessment at the home on 6 February 2018. The form completed said that: *care home to take his weight and monitor*. Ms C says the home received a copy of this form. However, the care home failed to do this. Her father lost nearly 6 kilograms in two weeks.
31. The nursing home's Assessment Report said:
- Mr F has been assessed as not having capacity to make decisions relating to eating and drinking
  - He has no difficulties eating - drinking - swallowing or chewing
  - Mr F eats and drinks independently. He needs a fork mashable dysphagia diet (modified diet E).
  - Mr F's weight will be monitored weekly through the Weight (M.U.S.T) Chart. His food intake will be monitored through the Food chart.
32. The nursing home's care plan "Eating and Drinking" said that:
- Mr F was unable to make choices about food and drink. He prefers to have a fork mashable diet, through choice rather than need. He needs his food cutting up.
  - The home needs to initially weight Mr C weekly. If his weight has been maintained after four weeks, he can be weighed monthly.
33. I reviewed a print out of the care home's electronic care records, which showed that Mr F did not receive fork-mashable food for lunch and dinner. However:
- He ate most of his breakfast most of the time.
  - He ate half (or less) of his lunch on five occasions.
  - He ate half (or less) of his dinner on six occasions.
  - He had pureed food four times
34. Ms C told me the records are not true as he never ate his meals.
35. The care provider told Ms C in June 2018 that:
- The staff assessed that Mr F did not have any difficulty with swallowing or chewing. He did have difficulty in cutting up food, so staff recorded it would cut his food for him.
  - A Texture Modified Diet is usually recommended by a professional (such as a Speech and Language Therapist), because providing one when there is no difficulty in swallowing can sometimes increase the risk of choking.
  - The records show Mr F was able to eat a normal diet without difficulty and often ate everything (or at least a significant part of his meals). This did not cause any swallowing or choking issues. As such, it was safe to provide him with normal textured food.
  - However, the staff team should have discussed this with the family before, or at the time of, Mr F's admission, so his preferences as well as his safety could have been met. I apologise if this did not happen in your case.
36. Ms C told me that staff did not cut up her father's meals.

- 
37. The care provider also said that: There was no need to formally monitor Mr F's weight, because he was a temporary respite client. As a result, it is not possible to verify if he lost weight during his short stay at the home. The provider considered the photos Ms C sent but could not conclude it showed significant weight loss.
38. The Council says:
- It has not been able to find any evidence in Mr F's medical records that he should receive only pureed food or only mashable food, or that he had difficulty with swallowing.
  - If a family says a resident needs a pureed diet, it would be normal process to follow this in cases of short periods of respite. If staff identify a problem, they should involve professionals (SALT etc).
  - The home should have done more, on admission, to find out from the family why Mr F was on a pureed diet. This should have been discussed and dealt with at that time.
  - Mr F's weight should have been documented on admission. His weight should always have been reviewed one week later (as per plan) and documented.

### **Analysis**

39. The care home has acknowledged it should have further discussed Mr F's need for mashable food with the family, rather than making a decision not to provide mashable food to him. The care home has already apologised for this, which is a sufficient remedy.
40. However, the daily care records indicate that, although Mr F occasionally refused his food, he ate half or more of his meals, even when many meals were not mashable. The records did also not show there was a clear link between getting mashable food and eating more. It may therefore have been that, to some extent, he simply did not have a lot of appetite at times.
41. I agree with the Council's view that *"Mr F's weight should have been documented on admission. His weight should always have been reviewed one week later (as per plan) and documented"*.

### **The home's alleged failure to empty Mr F's catheter bag on time**

42. Ms C says the home failed to empty her father's catheter bag on two occasions, as a result of which they started to leak and burst. This resulted in her father's clothes and bed becoming soaked with urine.
43. The care provider told Ms C in June 2018 that her photographs showed there was urine on the floor and bedding. It said the bedding should have been removed sooner and appropriate steps taken to deal with any spillage. The care home said it was sorry for the incident.

### **Analysis**

44. Urine was spilled on two occasions due to an overfull catheter bag, which is fault. The care home has already apologised for this, which is a sufficient remedy.

### **The way the care home dealt with Ms C's complaint**

45. Ms C says the care home failed to properly process / deal with the complaint she made. The family made a complaint on 20 March 2018 and was supposed to receive a response by 27 April 2018. Ms C says:
- The family did not receive a response and had to chase the care provider by telephone, and subsequently by email.

- 
- The care provider suggested to meet on 18 May 2018. However, she didn't turn up.
  - The care provider met Ms C on 25 May 2018 to discuss her complaint in more detail.
46. It took until 19 June 2018, before the care provider prepared a response. The provider says it sent this to Ms C and her solicitor. However, Ms C says they both did not receive it. I am unable to determine why this was the case. Ms C's solicitor told the care provider on 14 August 2018 that Ms C had not received a response yet. This should have alerted the provider that she did not receive their letter.
47. The director of the care provider met with Ms C on 17 January 2019. After the meeting, the director sent a letter on 29 January 2019 and attached a copy of the June 2018 letter. The letter said that:
- The meeting on 25 May 2018 should have been carried out as a priority, which clearly did not happen in this case. I apologise for the delay in arranging this with you.
  - The care provider's response dated 19 June 2018 was sent to Ms C and her solicitor, but not received by either.

### **Analysis**

48. It took two months before the care provider met with Ms C to discuss her complaint in more detail. This was an unreasonable delay.
49. Neither Ms C, nor her solicitor, received the complaint response letter dated 19 June 2018. As such I found that, on the balance of probabilities, this letter was produced but not sent out.
50. Even though Ms C's solicitor told the care provider in August 2018 that Ms C had not received a response as yet to her complaint, there was a further unreasonable delay to respond to this.
51. As a result, it took a long time (10 months) before Ms C received a response to her complaint. The above delays are fault and resulted in distress and frustration to Ms C.

### **The Council's safeguarding investigation**

52. Ms C complains the Council failed to share the findings from its safeguarding investigation with the family, with regards to each of the concerns they had raised.
53. The Council wrote to Ms C on 26 November 2018. The letter referred to a meeting with Ms C on 21 November 2018, during which the Council had shared the findings from its safeguarding investigation with Ms C. The Council said that, at the meeting, the investigator described what she had done, who she had spoken to and the reasons for her conclusion. Some of the issues were difficult to investigate because several staff involved had since left the home. Ms C told the Council at the time that she was thankful for the visit.
54. A further meeting was held on 17 January 2019 between the Council's Quality Management Team, the Care Home and Mr F's relatives, because the family remained unhappy. At the meeting, all the issues were discussed. Since the events, a new management team had been put in place. There was also a clinical lead nurse now in all of the care provider's care homes, so any problems can be looked at immediately.
55. The Council told Ms C on 28 June 2019 that:

- It is clear, from the care provider's responses and the notes from the meeting (between the Council, the care provider and Mr F's family), that some elements of the service were not up to the required standard. The provider has acknowledged and apologised for this. They also made a commitment to improving their practice and put measures in place to check this.
- The Council will continue to monitor the care home and ensure the improvements are sustained, so the home does not repeat the failings.
- The Council would like to offer a goodwill gesture of a £250 refund of the care home fees.

56. The Council says that:

- It is clear in the investigation report and running records that it investigated all the issues Ms C raised.
- The safeguarding investigator and manager provided feedback to the family with regards to all the issues raised. Further feedback was provided during the meeting in January 2019.
- The family did not raise any concerns with Mr F's allocated social worker at the time Mr F was still in the home. There were several contacts with the family during this time but the family did not raise any issues other than that the wound had not healed as well as they would have liked.

### **Analysis**

57. I did not find fault with the Council, who ensured that Ms C and her family received a response with regards to each of the issues they had complained about.

### **Agreed action**

58. When a council commissions a care home to provide services on its behalf, it remains responsible for those services and for the actions of the care home providing them. So, although I found fault with the actions of the care provider, I have made recommendations to the Council.

59. I recommended that, within four weeks of my decision, the Council should:

- Apologise to Ms C for the faults identified above and the distress these have caused Ms C.
- It should also pay Ms C £400 for the distress caused as a result of the deterioration in Mr F's affected skin area, and the delays in receiving a response to her complaint.
- Assure itself, together with the care provider, that the care home has made the required changes to prevent a reoccurrence of the above failings.

60. The Council has told me it has accepted my recommendations.

### **Final decision**

61. For reasons explained above, I have upheld Ms C's complaint. I am satisfied with the actions the Council will carry out to remedy this and have therefore decided to complete my investigation and close the case.

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62. Under the terms of our Memorandum of Understanding with the Care Quality Commission (CQC), I will share copy of my final decision statement with the CQC.

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



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

Summary: The Ombudsman will not investigate Mr B's complaint about the care his late father, Mr C received or charging for the care. This is because Mr B's complaint is late and there is no good reason for the Ombudsman to disapply the law to investigate it now.

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## **The complaint**

1. Mr B says his late father, Mr C, did not have the mental capacity to sign a financial assessment in November 2018 agreeing to pay for his care. Mr B says as Mr C's attorney's the Council should have included him or his brother in discussions about charging and believed Mr B was discharged from hospital to an intermediate or step-down care placement as he had done previously. Mr B says he wants access to Mr C's care records. Mr B says Mr C had poor care whilst he was resident in the home and was discharged without proper medication or paperwork. Mr B says Mr C's estate should not pay the £2256.00 the Council has invoiced for care it provided between 26 November and 24 December 2018 until a package of care was arranged for Mr C to return home.

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

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

## **How I considered this complaint**

3. I considered the information and documentation Mr B provided. I sent Mr B a copy of my draft decision and considered his comments on it.

## **What I found**

4. Mr B says the Council initially arranged a discharge from hospital meeting for Mr C without inviting family members or his attorneys. Mr B says it arranged a further meeting but neither he nor his brother could attend. Mr B says other family members attended and were advised at the end of the meeting Mr B would be discharged to an assessment bed awaiting a package of care to be arranged for his return home.
5. The Council says Mr B was discharged from hospital to a care home on 26 November 2018 as a short-term placement while a care package was being



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arranged. It explained previously the same year Mr C had been discharged either to an intermediate bed or assessment placement none of which required payment from the individual but on this occasion Mr C was discharged to a care home on a short term basis. The Council said this was discussed with Mr C who agreed and signed the financial form. The Council said the form was undated and will take this up with the worker in question, however, it confirmed case records show Mr C signed it on 26 November 2018. In addition, it says case records show it spoke to Mr B's brother on 6 December 2018 when visiting Mr C and reminded him to return the financial assessment form. It says Mr B's brother said he will speak to him.

6. Mr B says Mr C did not have capacity to sign the form and either he or his brother should have been included in discussions and arrangements for Mr C.
7. The Ombudsman will not investigate this late complaint. Mr B knew of the matters in 2018 and could have come to the Ombudsman sooner if he was concerned the Council were charging Mr C for care he believed should have been free.
8. Mr B says Mr C did not have capacity to decide he should pay for care and has not seen any capacity assessments. The Ombudsman could not say Mr C lacked capacity in 2018.
9. The Mental Capacity Act 2005 says a person must be assumed to have capacity unless it is established that he lacks capacity. A person should not be treated as unable to make a decision:
  - Because he makes an unwise decision.
  - Based simply on: their age; their appearance; assumptions about their condition, or any aspect of their behaviour.
  - Before all practicable steps to help the person to do so have been taken without success.
10. Mr B says Mr C was returned home in a private ambulance on 24 December 2018 with a sore eye and feet, without paperwork and looking dishevelled. Mr B says he contacted the care home and asked for an explanation of what happened but did not receive a call back.
11. The Ombudsman will not investigate this late complaint. The matters complained of are more than 12 months old.
12. Mr B says he could not complain sooner because payment for Mr C's care was deferred until after he died in February 2020 and his property was sold. It was only then the family were able to dispute the charges for care they believe should be free of charge. However, the Ombudsman could not say Mr C lacked capacity to make decisions in 2018 or that he should have had a capacity assessment to determine whether he could agree to pay for his care. I have not seen any evidence that Mr C was discharged from hospital in November 2018 to an intermediate or step-down placement.

## **Final decision**

13. The Ombudsman will not investigate this complaint. This is because the concerns Mr B raises now are more than 12 months old and there is no good reason to disapply the law to investigate now.

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

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5 November 2020

Ms Jo Kirkby  
Team Manager – Complaints and Information Team  
Nottinghamshire County Council  
Resources Department  
County Hall, West Bridgford  
Nottingham  
NG2 7QP

Your ref:

Our ref: 20 005 683

(Please quote our reference when contacting us and, if using email, put the number in the email subject line)

**If telephoning please contact: 0330 403 4627**

**email address: E.Kennedy@coinweb.lgo.org.uk**

Dear Ms Kirkby

We have received a complaint against your Council. I have advised the complainant that we cannot consider this complaint because it relates to an employment or personnel matter. Such matters are excluded from our jurisdiction under schedule 5/5A paragraph 4 of the Local Government Act 1974.

In such cases, our practice is to treat the details of the complaint as confidential to the complainant. However, I am informing you of it for statistical purposes.

Yours sincerely



Emma Kennedy  
Investigator, Assessment Team

*We will include this complaint in the published figures for the year ending 31 March 2021. We will record the category as: Corporate & Other Services and the decision as: Closed after initial enquiries - out of jurisdiction.*

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

Summary: Miss X complains about the Council's handling of a child protection referral about her son. I have completed my investigation. There is some fault by the Council. It should apologise, pay Miss X £450 and take action to improve its service.

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## **The complaint**

1. Miss X complains about the way the Council handled a child protection referral about her son. She says:
  - a) the Council did not tell her it was assessing her;
  - b) her son's case was closed based on inaccurate information about the support he was getting from Youth Offending services; and
  - c) the Council did not keep her properly informed and delayed in providing documents she requested.
2. Miss X says the Council failed to make reasonable adjustments for her as a person with dyslexia when making her complaint.
3. She also complains about how the Council handled her data and says that her privacy was not maintained.
4. As a result, Miss X says she and her son have experienced anxiety and distress.

## **What I have investigated**

5. I have not investigated Miss X's complaint about how the Council handled her data. I explain my reasons for this at the end of this decision.

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

6. 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*)
7. We normally expect someone to refer the matter to the Information Commissioner if they have a complaint about data protection. However, we may decide to investigate if we think there are good reasons. (*Local Government Act 1974, section 24A(6), as amended*)

- 
8. 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**

9. I spoke to Miss X about her complaint.
10. I wrote to the Council and considered its response along with relevant law and guidance.
11. I referred to the Ombudsman's guidance on remedies, a copy of which can be found on our website.
12. Miss X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

## **What I found**

### **What happened**

13. Miss X's son, whom I shall call Mr Y, was subject to a licence which imposed certain conditions on his activity and behaviour. At the time, Mr Y was under 18.
14. In December 2018, police found Mr Y in a situation which breached his licence conditions. The police told the Council about this under its duty to notify the Council about child protection concerns.
15. In December 2018, a social worker visited Miss X and her son at home to conduct an assessment. Miss X says the Council did not tell her this was an assessment.
16. In January 2019, Mr Y went to court and was recalled to prison for breaching his licence.
17. In February 2019, the Council held a Child in Need meeting. It agreed that Mr Y was a Child in Need. Miss X says she had to ask three times for a copy of the minutes from this meeting.
18. In April 2019, the Council wrote to Miss X. It said that it was closing Mr Y's case because of the high level of involvement from the Youth Justice Team.
19. Miss X says that at the point of the licence breach, Mr Y only saw someone from the Youth Offending Team (YOT) for a few hours a week. She says this cannot be described as a "high level of involvement".
20. Miss X complained to the Council about several issues. The Council responded to her complaint in September and again in October 2019.
21. Miss X was not satisfied with the complaint response and asked the Council to consider her complaint at stage two.
22. In November 2019, the Council told Miss X that it did not consider her concerns as a complaint. Rather, it said she had raised issues about access to records and data.

## **My findings**

### **The assessment**

23. Miss X says the Council did not tell her it was assessing her when it visited in December 2018. The Council says the social worker spoke to Miss X on the telephone to arrange the meeting and explained the purpose of the visit. The

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Child and Family assessment (CAF) also records that Miss X consented to the assessment.

24. I find it likely the Council did tell Miss X it was conducting an assessment. In any event, Miss X says she would not have refused the assessment. So even if I were to find fault, there is no injustice to Miss X.
25. Similarly, Miss X says she did not consent to her information being shared with other agencies. The CAF form records her as having agreed to this. However, since the Council was conducting a child protection inquiry, it did not need Miss X's consent to share information. Therefore, there is no injustice to Miss X.

### **Closing the case**

26. The Council closed Mr Y's case to children's services because of the "high level of involvement" of Youth Justice Services. It decided that Mr Y's needs would be met this way.
27. Miss X says this information was inaccurate because Mr Y had only been seeing YOT for a few hours a week prior to his recall to prison.
28. However, the Council decided to close the case after Mr Y had returned to prison. At this point, the Youth Violence and Exploitation Panel and Multi-Agency Public Protection Arrangements (MAPPA) had become involved in Mr Y's case. The Youth Offending Team had indicated that when released, Mr Y would likely be under an intensive supervision order.
29. These are specialist agencies who work with people with offences. It is not fault for the Council to decide such agencies can best meet Mr Y's needs.

### **Communication and providing information**

30. In its letter to Miss X in October 2019, the Council accepted it delayed sending her the minutes of the strategy meeting and a copy of the assessment. It apologised for this.
31. The delay is fault. However, I do not consider an apology to be an appropriate remedy for the injustice caused. This is because Miss X had to make several requests for the information. This caused her frustration and unnecessary time and trouble at an already difficult time. In addition to the apology, the Council should pay Miss X £100 to acknowledge this.

### **The complaints process**

32. The Council's responses of September and October 2019 refer to Miss X's complaints. Despite this, when Miss X asked the Council to escalate her complaint to stage 2, it told her that her concerns were about information and data. It said her concerns should be dealt with by the Information Commissioner and not the Ombudsman.
33. Miss X had already approached the Information Commissioners Office (ICO). In October 2019, the ICO wrote to Miss X. It said:
- "we understand a number of complaints are about the service you have been provided by the council, unfortunately service complaints are not within our remit and we are unable to provide advice on these matters."*
34. Although parts of Miss X's complaint were about information and data protection, she had also complained about the service the Council provided her and her son. Furthermore, the Council had already dealt with Miss X's concerns at stage one as a complaint. Miss X's confusion and frustration at the Council then telling her she hadn't in fact made a complaint at all is understandable.

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35. It was fault for the Council not to deal with Miss X's complaint at stage two of its complaints process. This caused Miss X avoidable frustration and confusion and delayed her recourse to the Ombudsman unnecessarily. The Council should apologise to Miss X and pay her £150 in recognition of this injustice.

### **Reasonable adjustments**

36. Miss X has dyslexia. She says this makes written communication particularly difficult for her. Miss X says that despite this, the Council required her to make her complaints in writing.
37. In response to my enquiries, the Council said:  
*"there was no indication from [Miss X] that she had any additional needs, therefore, we were not made aware of the need to make any such adjustments."*
38. Miss X says she told the Council during several phone calls about her dyslexia. In August 2019, Miss X wrote in an email to the Council "I did ask for information by [post] instead of email because I have dyslexia". In an email to the Council in October 2019 Miss X said "please don't forget I have dyslexia".
39. By August 2019 at the latest the Council knew Miss X had dyslexia. The Council should have asked Miss X if she needed any reasonable adjustments to access the service. There is no evidence the Council did this. This is fault.
40. The Council's failure to recognise that Miss X's complaint was about both data protection and service provision might have been avoided had it supported her to communicate in the ways she finds most effective. Instead, Miss X struggled to make her complaint understood. The Council should apologise and pay Miss X £200 for the unnecessary additional distress this caused.

### **Agreed action**

41. To remedy the injustice caused by the faults I have identified, the Council should:
- Apologise to Miss X in writing; and
  - Pay Miss X £450
42. The Council should take this action within four weeks of my final decision.
43. The Council should also take the following action to improve its services:
- Ensure customers are given the opportunity to identify any reasonable adjustments they might need. For example, by reminding or training relevant staff to include the question at first point of contact.
44. The Council should tell the Ombudsman about the action it has taken within eight weeks of my final decision.

### **Final decision**

45. I have completed my investigation. Fault by the Council caused Miss X an injustice. The action I have recommended is a suitable remedy.

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

46. I did not investigate Miss X's complaint about the Council's handling of her data. This is because the Information Commissioner's Office is the body best placed to consider complaints about data protection.

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## Investigator's decision on behalf of the Ombudsman

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

Summary: Mr X complained about the processes and information in two child and family assessments the Council completed. He also says the Council failed to ensure his children were suitably educated. The Council was not at fault.

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## **The complaint**

1. Mr X complained the Council:
  - interviewed his two children without his consent;
  - falsely stated someone at the children's school had referred to one of the children as 'rough';
  - included inaccurate information about him in a child and family assessment and refused to remove or amend this on his request;
  - did not give him sufficient opportunity to provide the information he considered necessary;
  - revealed to his wife information he had provided in confidence; and
  - failed to provide his children with a suitable school to attend resulting in them being home tutored.
2. Mr X said this has had an adverse effect on his children and himself.

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

3. 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*)
4. The Information Commissioner's Office considers complaints about freedom of information. Its decision notices may be appealed to the First Tier Tribunal (Information Rights). So where we receive complaints about freedom of information, we normally consider it reasonable to expect the person to refer the matter to the Information Commissioner.
5. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)



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## How I considered this complaint

6. I spoke to Mr X and considered his view of his complaint.
7. I made enquiries of the Council and considered the information it provided. This included the family's case file, the child and family assessments from 2018 and 2019 and details of the children's school placements.
8. I gave the Council and Mr X the opportunity to comment on my draft decision.

## What I found

### Child and family assessments

9. Child and family assessments gather information about the child and their family to make decisions about:
  - whether any interventions are required, and if so, what they should be; and
  - whether the child meets the criteria for ongoing services as a child in need.
10. The 'voice of the child' must be sought as part of the assessment. The Council must seek permission from the parent to speak to the child. If the parent does not give consent, and there are child protection concerns, councils will consider whether to begin safeguarding procedures.

### Education Act 1996

11. Section 19 of the Education Act 1996 confers duties on councils to ensure children receive a suitable education:

*"Each local education authority shall make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them".*
12. Section 7 of the Act confers duties on parents to ensure their child receives a suitable education:

*"the parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable-(a) to his age, ability and aptitude, and (b) to any special educational needs he may have, either by regular attendance at school or otherwise".*
13. Education is compulsory. Going to school is not. This means that under s7 of the Act, parents can choose to educate their child at home.

### Background

14. This complaint covers events from August 2019 to March 2020.
15. Mr and Mrs X have two primary school aged children, Y and Z.
16. The family has been known to the Council and Police since around 2014 due to alleged domestic abuse. The Council carried out an initial assessment in 2016 and then a child and family assessment in 2017. Y and Z became children in need.
17. The Council closed the case in 2018 when Mrs X said she was no longer in a relationship with Mr X.

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### Events relating to the child and family assessments

18. In August 2019, following an alleged incident between Mr and Mrs X, the Police were called. As a result, the Council became involved and began a child and family assessment.
19. On 23 September 2019, Mrs X gave consent for the children to be seen at school. A Council child and family assessor visited school to speak to the children and their teachers.
20. The child and family assessment provided details of the family's history. The assessment also contained the following details:
  - “[Y] *can be rough at times but generally...is settling in well*”;
  - the children's views of their father, which included a recollection of domestic violence;
  - the assessor's view that *“it is concerning the children have an understanding of their father's gambling addiction... this will raise anxieties and instabilities”*; and
  - Mr X's response to the assessor's views of whether he had a gambling addiction. Mr X strongly refuted this, stating he would spend around £100 a month on gambling and it was a hobby not an addiction. He said it did not have a negative effect on the children because he did not take them into the betting shop.
21. The assessor recommended Mrs X was referred to family services to take part in a support programme. The assessor also recommended the case was closed to children's social care because:
  - Mr and Mrs X were again no longer in a relationship;
  - Mrs X was working with a woman's aid charity;
  - Mrs X had contributed positively to the recent Police investigation into the latest alleged domestic violence incident.
22. The Council carried out another child and family assessment in January 2020. This provided an update on the family's circumstances. It noted:
  - Y was being electively educated at home;
  - Mrs X had not engaged with the support programme but wanted to work with the Council over the children in need plan;
  - Mr X was not living with the family, but Mrs X was in a relationship with him;
  - the assessor had concerns that Mr X seemed to be controlling various matters. The assessor cited a report from the Council's elective home school adviser which stated that Mr X wanted all communication regarding the children's education to go through him; and
  - the assessor's manager recorded the following comments: *“It is extremely concerning the father does not acknowledge his part in the current concerns... if the child in need plan is not adhered to and there is no meaningful engagement, then consideration to escalate the case should be seriously considered”*.

### Events regarding the children's education

23. On 12 November 2019, Mrs X made an in-year school admissions application for Y for two primary schools.

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24. On 13 November 2019, Mrs X registered Y as being electively home schooled and removed them from school (School S).
  25. The two schools refused Y a place stating they were oversubscribed. The Council sent Mrs X a letter informing her of the outcome and advising her how to appeal these decisions. The Council did not make her an alternative offer because by this time Y was being home schooled.
  26. An elective home school adviser visited the family on 28 November 2019 to provide guidance about home schooling Y.
  27. In February 2020, the parents submitted in year school admissions applications for two schools for both Y and Z. At this time, Z was still on role at a different school.
  28. The Council wrote to the parents on 14 February to say there were no places at either school and informed them of their appeal rights. A record from the case files for the same date showed Mr X phoned the Council to say he would be home schooling Z whilst they looked for a school. Mr X said Y was also already being home schooled.
  29. Another record from the case file, also from 14 February, stated the Council's home school adviser did not consider the children could be classed as 'home educated' because Mr X wanted them in school and was looking for placements.
  30. The Council made the parents an offer for Y of a different school, School S. This was the school Y had originally attended when their parents removed them in November 2019. The parents refused the offer. The Council did not make an alternative offer for Z because they were still on role at their primary school.
  31. On 12 March 2020, the parents informed the Council they had removed Z from school.

#### **Events in relation to Mr X's complaint to the Council**

32. Mr X initially complained to the Council on 13 November 2019. His complaints were in line with the ones in paragraph 1 of this decision statement.
33. The Council acknowledged Mr X's complaint the same day and then wrote again on 23 November to ask for further clarification of Mr X's complaints. Mr X provided this on 2 December 2019. The Council acknowledged his response on 4 December and said it would not consider his requests to amend the child and family assessments. The Council explained its reasons why and said it would place a copy of Mr X's comments on the file.
34. A Council officer responded to Mr X's complaints on 3 January 2020. In relation to the complaints in paragraph 1, the officer said:

#### **Y was 'rough'**

35. The school informed the assessor that Y was 'rough' at times. The assessor recorded this on the child and family assessment.

#### **Consent to speak to children**

36. Mrs X had verbally given consent on 23 September 2019.

#### **The assessor's comment that Mr X's gambling had a detrimental effect on the children**

37. The officer spoke to the assessor about her analysis of the situation. The assessor was concerned that Mr X appeared to minimise the potential impact of

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his gambling on the children and in doing so, had not provided open and honest answers.

38. The officer was satisfied the assessor's conclusions were evidence based and supported her concerns.

**Concerns the assessor breached confidentiality when she discussed her conversation with Mr X with his wife**

39. The officer said the assessor went to speak to Mrs X after speaking to Mr X, but the assessor said she did not discuss details of the conversation she had just had with him.

**The assessor showed a lack of concern for the fact the children were out of education**

40. The officer said at that stage the safety and welfare of the children were paramount and the assessor made decisions based on safeguarding matters.

**Assessor formed conclusions and wrote a biased report based on a 15 minute conversation with Mr X**

41. The officer informed Mr X that the report was based on information provided by third party agencies and conversations with all family members. The officer said it was expected in domestic abuse situations that people would view matters differently.
42. Mr X challenged the outcome of the investigation and asked that it be escalated to stage 2 of the complaint procedures. A Council officer independent of the events reviewed the officer's report and replied on 14 January 2020. The Council upheld the findings of the officer.
43. Mr X complained to us.

**My findings**

**The child and family assessments**

44. I have reviewed the child and family assessments from 2019 and 2020 and the case notes for the family.
45. There is no fault in either the procedures followed by the Council or the contents of the assessments.
46. The case notes indicate consent was given by Mrs X on 23 September 2019 for the assessor to speak to the children. This was sufficient. The assessor did not also need the consent of Mr X.
47. The assessor spoke to the school, Mr and Mrs X and the children. The assessor included information relating to ongoing and historic Police involvement, Mr X's gambling, his views and opinions on this together with his views on the domestic abuse allegations and their effect on the children, and the views of the school. All this was relevant and in line with the guidance on child and family assessments. The assessor came to professional judgements, views and conclusions which is what I would expect them to do. These were evidence based and it is clear from the reports what is fact and what is opinion. Mr X disagrees strongly with these views and opinions but that does not mean they are wrong or that the assessor should not have reached them. Further clarification was given by the Council to Mr X in both complaint responses over why the assessor came to their conclusions and all aspects of his complaints. The Council has already told Mr X it will place a copy of his comments on the case file.

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48. If Mr X wishes, he can complain to Information Commissioner's Office under the right to rectification if he remains unhappy with this aspect of his complaint.

### **Education of the children**

49. Y had a place at School S. Mrs X removed Y and told the Council she would electively home school them. She was entitled to do so under s7 of the Education Act and the Council was also entitled to conclude it had met its s19 duties. An elective home school officer visited the family shortly after Mrs X made this decision to provide advice. There was no fault in the Council's actions.
50. When the parents decided they wanted Y to be educated at school, the Council processed their in-year school admissions forms promptly and informed Mr and Mrs X of their appeal rights when the schools did not offer placements. The elective home school officer considered the children could not be classed as being home schooled because the parents were applying for school placements. The Council therefore offered Y a school place which his parents refused. It had no duty to offer Z a place at this time because the child was on a school role. There was no fault in the Council's actions.

### **Final decision**

51. There was no fault in the Council's actions. Therefore, I have completed my investigation.

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

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

Summary: We will not investigate this complaint about the Council's approval to extend an access driveway. This is because the complaint is late and there are no good reasons for us to consider it now and it is unlikely we would find the Council at fault.

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## **The complaint**

1. Miss Y complains the Council has allowed her neighbour to extend the access driveway crossing the pavement to provide access to the neighbouring property. She also complains the Council has not provided her with its policy on dropped kerbs, including the standard measurements used.
2. Miss Y says the approval has led to her neighbours regularly using the access driveway, including at night, when lights shine into her home, disturbing the sleep of her and her family.

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

3. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
5. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe it is unlikely we would find fault. (*Local Government Act 1974, section 24A(6), as amended*)

## **How I considered this complaint**

6. I considered the information Miss Y and the Council provided. Miss Y had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

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## **What I found**

7. Miss Y says tarmac was added to extend part of the access driveway leading to her home in July 2019. She contacted the Council and its' contractor in mid-July to complain about the approval, and the extension to the driveway.
8. The contractor responded on behalf of the Council at the end of July 2019. It said the access to Miss Y's property was part of an adopted highway, and not her private land, and for the use of all highway users, including her neighbour. The Council then responded directly in August 2019. It said it had reviewed the access and was satisfied it did not cause a safety hazard. It repeated the contractor's explanation, that the access was part of an adopted highway and said it considered additional vehicle access to properties on a case by case basis. The Council referred Miss Y to the Ombudsman if she wished to pursue her complaint.
9. Correspondence continued between Miss Y, the Council, including one of the councillors, and its contractor from August 2019 until the end of July 2020. She made further contact with the Councillor about the issue in late August 2020. Miss Y approached the Ombudsman in September 2020.

## **Analysis**

10. As Miss Y has been aware of the cause of her complaint since July 2019 her complaint is late. We cannot investigate late complaints unless we decide there are good reasons.
11. Miss Y has not provided any good reasons why she did not complaint to us sooner. Therefore, it would have been reasonable for Miss Y to have contacted the Ombudsman during the 12 months after she became aware of her complaint.
12. The Council properly considered Miss Y's complaint about the approval for access being extended, including ownership of the land, the adoption of the access as a highway and Mrs Y's safety concerns. Consequently, we will not investigate this complaint as it is unlikely the Ombudsman would find the Council at fault.

## **Final decision**

13. We will not investigate this complaint. This is because the complaint is late and there are no good reasons for us to consider it now and it is unlikely we would find the Council at fault.

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



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

Summary: Mr X complains about the Council's delay in referring a map modification order to the Planning Inspectorate. The Ombudsman has discontinued our investigation. This is because Mr X has asked the Ombudsman to withdraw his complaint as the Council has now referred the matter to the Planning Inspectorate.

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## **The complaint**

1. Mr X complains about the Council's delay in referring a map modification order to the Planning Inspectorate.

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

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

## **How I considered this complaint**

4. I considered the information provided by Mr X.
5. I considered the information provided by the Council.

## **What I found**

### **What happened**

6. A member of the public can ask for a Modification Order to the Definitive Map if they believe, and has supporting evidence, that a footpath or other right of way is shown on the wrong place on the map. This process can also be used to claim that an existing path should be on the map if it is not.
7. The Council must publicise the order and if there are not objections from the public, it is confirmed, and the right of way is added. If it is opposed, the Council must submit the proposed order to the Planning Inspectorate for a decision. There



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is no time scale set out in law for when a Council must refer the case to the Planning Inspectorate by.

8. In 2004, Mr X's rambler's association asked for a modification order to the definitive map. The Council made the order in March 2004. The Council received seven objections to the modification order.
9. In 2015, Mr X asked the Council for an update on the modification order. He said the Council told him the case was with its legal team.
10. In August 2020, Mr X complained to the Ombudsman.
11. In November 2020, Mr X told the Ombudsman the Council had confirmed it had referred the modification order to the Planning Inspectorate. Mr X asked the Ombudsman to withdraw his complaint.

### **Analysis**

12. I have discontinued my investigation. This is because the Council has now referred the matter to the Planning Inspectorate and Mr X has requested the Ombudsman withdraw his complaint.

### **Final decision**

13. I have discontinued my investigation.

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

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

Summary: Mr B complains about how the Council is meeting his care needs and how it has calculated his financial contribution to the care he receives. There appears to be fault in the financial assessment and this has caused Mr B uncertainty. The Council will invite Mr B to provide further evidence and give him more information about how he can access available services.

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## **The complaint**

1. Mr B complains about how the Council is meeting his eligible care needs. In summary:
  - Mr B considers the Council should increase his care package, in particular, to prepare fresh meals as recommended by his doctor and to support him at night.
  - The Council agreed a new disability-related expenditure (DRE) amount in April 2019. However, it has not responded to Mr B's requests to backdate this to August 2018.
  - The Council's financial assessment takes into account Mr B's full Attendance Allowance (Attendance Allowance helps with extra costs if you have a disability severe enough that you need someone to help look after you). He considers this should be adjusted to reflect the fact he needs support at night.

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

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

## **How I considered this complaint**

4. I have considered a complaint form Mr B completed and I have agreed a complaint summary with him. I have invited comments from the Council and

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considered its response with supporting evidence including Mr B's care plan and financial assessment.

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

## What I found

### What should have happened

#### Charging for care services

6. Councils can make charges for care and support services they provide or arrange. Charges may only cover the cost the council incurs. (**Care Act 2014, section 14**)
7. Councils must assess a person's finances to decide what contribution he or she should make to a personal budget for care. The scheme must comply with the principles in law and guidance, including that charges should not reduce a person's income below Income Support plus 25%. The Council can take a person's capital and savings into account subject to certain conditions. If a person incurs expenses directly related to any disability he or she has, the Council should take that into account when assessing his or her finances. (**Care Act 2014 Department for Health, 'Fairer Charging Guidance' 2013, and 'Fairer Contributions Guidance' 2010**)

#### Disability-related benefits and expenditure

8. The Care Act 2014 and the associated Care and Support Statutory Guidance (the Guidance) Annex C sets out income the Council must consider when deciding what a person should contribute to his or her care.
9. Paragraph 14 says the Council may take most of the benefits people receive into account. However, the Council needs to ensure that in addition to the minimum guaranteed income or personal expenses allowance people retain enough of their benefits to pay for things to meet those needs not being met by it.
10. Paragraph 16 says income from some benefits must be taken into account when considering what a person can afford to pay from their income towards the cost of their care and support in a care home. Attendance Allowance is one of the benefits the Council must take into account when a person is in a care home.
11. Paragraph 39 says that where disability-related benefits are taken into account, the Council should make an assessment and allow the person to keep enough benefit to pay for necessary DRE to meet any needs which are not being met by the Council.
12. Paragraph 40 says when assessing DRE, the Council should include the costs of any specialist items needed to meet the person's disability needs, for example day or night care which is not being arranged by the Council.

#### 24-hour emergency home care response service

13. The Council commissions an emergency response service. This service provides emergency support at home for occasional issues such as assistance with toileting and cleaning up. The service is intended to be for less-frequent call outs. Therefore, if a person uses the service more than 12 times in a four-week period, the Council will discuss whether there is a more appropriate way to meet his or her needs.

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### **What did happen**

14. In October 2019, the Council completed a review of Mr B's needs. The assessment commented on Mr B's toileting needs. It recorded Mr B usually only needed to empty his bowels once a day in the morning and carers would support him during the day with this need. The assessment notes '*...Emergency response service offered, this has been declined.*'
15. Mr B complained to the Council the same month. He explained the assessment did not reflect the agreed number of care hours. He wrote again in November 2019 to explain his complaint was about the Council's decision to reduce the number of carers visiting from two to one. He said this effectively halved the care he received.
16. Mr B also said he needed help at night which the Council did not provide. Further, the Council had taken the higher rate of his Attendance Allowance into account when assessing his finances. This meant he was unable to afford the support he needed at night.
17. Mr B has recently told me the Council has increased the care he receives during the day. Therefore, this has resolved the first part of this complaint. However, he remains concerned about the Council's decision on his Attendance Allowance.
18. The Council responded to Mr B's complaint in November 2019. It addressed the issue of reduced care. However, there was no mention of Mr B's Attendance Allowance.
19. Mr B wrote again in December 2019. He said a Council officer told him he could access services 24 hours a day, seven days a week. The Council officer said the Council took his Attendance Allowance into account as it provides these after-hours services. Mr B explained he had contacted a district nurse to visit as he had soiled himself at night. However, the nurse told him it was not her responsibility to visit. Therefore, Mr B had to contact a private care provider for support that night. Mr B also said he would continue to pursue his points of complaint, including '*...my DRE allowance introduction date...*'
20. In January 2020, the Council replied. It said it was usual practice for the full Attendance Allowance to be used when calculating contributions. It also noted Mr B's most recent assessment allowed increased disability-related expenditure (DRE).
21. Mr B complained to the Ombudsman. In response to my enquiries, the Council said it applies the Guidance at Annex C paragraph 16 to financial assessments. This means that it takes the full Attendance Allowance into account.

### **Analysis**

22. The Council says it applies paragraph 16 of Annex C to financial assessments. However, the list of benefits the Council must include under paragraph 16 only applies when the person receiving care is in a care home. This is not the case with Mr B. The Council appears to be applying the Guidance for care in a care home to Mr B's circumstances. This is fault.
23. However, the Guidance at paragraph 14 says that the Council may take most benefits into account in assessing someone's finances. The Guidance lists benefits which must never be included, Attendance Allowance is not on this list. This indicates that the Council has a very broad discretion in deciding which benefits it will include when assessing a person's finances. I therefore do not

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consider Mr B has suffered an injustice as a result of the Council including the full amount in his assessment.

24. However, while the Council is entitled to take the Attendance Allowance into account, it must also consider whether Mr B can still pay for any care he receives at night. It should do this by considering whether it should allow any amounts Mr B pays as a DRE as set out in paragraphs 39 and 40 of the Guidance. I cannot see that the Council has considered whether Mr B is entitled to DRE to cover night-time care. This is fault.
25. However, it is not clear, apart from the one instance Mr B has mentioned, whether he has been frequently paying for care at night. For example, for more call outs than would be permitted under the Council's emergency response service. This appears to have caused Mr B uncertainty around whether the Council should be considering any services he pays for as DRE and is a missed opportunity to do so.
26. Mr B has had difficulty accessing the emergency response service. It is not clear whether the district nurse to whom he refers in his complaint forms part of the Council's service or whether he contacted the wrong service in error. I cannot conclude, from the evidence provided, that the Council gave Mr B enough information in this regard. Further, I have seen no evidence the Council tried to clarify how Mr B could access the service following his complaint. Mr B has suffered an injustice as he does not appear to know how to access a service to which he is entitled.
27. I have not seen evidence that Mr B specifically requested the Council consider backdating the increased DRE to August 2018. The reference in Mr B's December 2019 complaint to a 'DRE allowance introduction rate' seems vague. However, the Council has confirmed it has now agreed to backdate the DRE to August 2018.

### **Agreed action**

28. Within one month of my decision, the Council will invite Mr B to provide evidence of any payments for night-time support. It will consider whether any evidence Mr B provides warrants a further increase in his DRE.
29. The Council will again provide Mr B information about its emergency response service and explain how Mr B can access this.

### **Final decision**

30. There is evidence of fault in relation to the financial assessment and how the Council has applied the Guidance. However, the Council may include Mr B's full Attendance Allowance in his financial assessment. The Council will invite Mr B to provide evidence if he pays for night-time support and consider whether it should treat this as DRE. The Council will also ensure Mr B knows how to access the service it provides to meet his night-time toileting needs.
31. I have therefore completed my investigation.

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

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

Summary: The Ombudsman will not investigate this complaint that the complainant cannot have unsupervised contact with her grandchildren. This is because there is insufficient evidence of fault by the Council and because an investigation would not lead to a different outcome.

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## **The complaint**

1. The complainant, whom I refer to as Mrs X, complains that she cannot have unsupervised contact with her grandchildren. She says it is unfair because she has not done anything wrong.

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

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

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

## **How I considered this complaint**

3. I read the complaint and the Council's response. I considered information about the parents regarding contact. I invited Mrs X to comment on a draft of this decision.

## **What I found**

### **What happened**

4. Mrs X was served with a Child Abduction Warning Notice by the police in 2018. It expired in 2019. Mrs X's partner has been convicted of offences against children.
5. The parents (of Mrs X's grandchildren) have agreed their children cannot have unsupervised contact with Mrs X or her partner. The agreement is indefinite unless the parents ask to change the contact arrangements. The Council would then do assessments. The Council told Mrs X that it does not recommend

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unsupervised contact because of the offences committed by Mrs X's partner and because of the events that led to the abduction warning notice. The Council said that decisions about contact rest with the parents but the Council had advised of the possible outcomes regarding unsupervised contact. The Council said Mrs X could get legal advice.

### **Assessment**

6. I will not start an investigation because there is insufficient evidence of fault by the Council and because an investigation would not lead to a different outcome. The Council correctly told Mrs X it is the responsibility of the parents to decide the contact arrangements for their children and it explained the reasons for the supervised contact. I could not change the contact arrangements, even if I started an investigation, because it is for the parents to make decisions about contact. Mrs X, as a grandparent, has no legal right to insist on any form of contact. In addition, due to confidentiality and data protection, there is no more information that could be shared with Mrs X.

### **Final decision**

7. I will not start an investigation because there is insufficient evidence of fault by the Council and because an investigation would not lead to a different outcome.

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



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

Summary: The complainant, Ms B, said the Council was wrong to decide her mother-in-law, Mrs D, deprived herself of assets to avoid paying care fees. Ms B says the actions of the Council has caused Mrs D and the family avoidable distress and worry. The Council was entitled to pursue the debt, but the Ombudsman found fault in the way the Council decided to pursue Mrs D for the debt. the Council has agreed with the Ombudsman's recommendations and will assess Mrs D's capacity to make specific financial decisions, consider her best interests if necessary and decide who is best placed to manage her finances. The Council will also remind its staff of the importance of completing mental capacity assessments when there is doubt about a person's capacity to make specific decisions.

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## **The complaint**

1. The complainant, who I shall refer to as Ms B, complains the Council was wrong to decide her mother-in-law, Mrs D, deprived herself of assets to avoid paying care fees. Ms B and her husband say Mrs D agreed to repay money she owed them when she sold her house in September 2018 and she was not trying to avoid paying for care fees. They say they had never intended for Mrs D to go into care and did not decide she should remain in a nursing home permanently. Ms B believes the Council's decision is wrong and the action taken by the Council to pursue the debt is causing her, her husband and Mrs D avoidable distress and worry. They want the Council to change its view and start to pay their mother's care fees as she does not have enough capital above the lower limit to do so herself.

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

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



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## How I considered this complaint

4. I have considered information provided by the complainant and information from the Council in response to my enquiries. I have also considered the law and guidance relevant to this complaint.
5. The complainant and the Council were given an opportunity to respond to a draft of this decision.

## What I found

### Law and guidance relevant to this complaint

6. The Mental Capacity Act 2005 is the framework for acting and deciding for people who lack the mental capacity to make particular decisions for themselves. The Act (and the Code of Practice 2007) describes the steps a person should take when dealing with someone who may lack capacity to make decisions for themselves. It describes when to assess a person's capacity to make a decision, how to do this, and how to make a decision on behalf of somebody who cannot do so themselves.
7. The council must assess someone's ability to make a decision, when that person's capacity is in doubt. How it assesses capacity may vary depending on the complexity of the decision.
8. A key principle of the Mental Capacity Act 2005 is that any act done for, or any decision made on behalf of a person who lacks capacity must be in that person's best interests.
9. Section 4 of the Act provides a checklist of steps that decision makers must follow to determine what is in a person's best interests. The decision maker also has to consider if there is a less restrictive choice available that can achieve the same outcome.
10. The Care Act 2014 is the overarching legislation relating to council's obligations in respect of people who have social care and support needs.
11. The Care and Support statutory guidance (C&SSG) provides councils with the information they need about how they should meet the legal obligations placed on them by the Care Act 2014.
12. Local authorities have a duty to arrange care and support for those with eligible needs, and a power to meet both eligible and non-eligible needs. In all cases, a local authority has the discretion to choose whether to charge under section 14 of the Care Act following a person's needs assessment. Where it decides to charge, it **must** follow the Care and Support (Charging and Assessment of Resources) regulations and have regard to the guidance.
13. Where a local authority has decided to charge, except where a light touch assessment is permissible it **must** carry out a financial assessment of what the person can afford to pay and, once complete, it must give a written record of that assessment to the person.
14. At the time of the assessment of care and support needs, the local authority must establish whether the person has the capacity to take part in the assessment. If the person lacks capacity, the local authority must find out if the person has any of the following as the appropriate person will need to be involved:
  - enduring power of attorney (EPA)

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- lasting power of attorney (LPA) for property and affairs
  - lasting power of attorney (LPA) for health and welfare
  - property and affairs deputyship under the Court of Protection
  - any other person dealing with that person's affairs (for example, someone who has been given appointeeship by the Department for Work and Pensions (DWP) for the purpose of benefits payments)
15. The financial limit, known as the 'upper capital limit', exists for the purposes of the financial assessment. This sets out at what point a person is entitled to access local authority support to meet their eligible needs.
16. The upper capital limit is currently set at £23,250. Below this level, a person can seek means-tested support from the local authority. This means that the local authority will undertake a financial assessment of the person's assets and will make a charge based on what the person can afford to pay. In the financial assessment capital below the lower capital limit – currently set at £14,250 – is not considered in the assessment of what a person can pay in tariff income assessed against their capital. Where a person's resources are below the lower capital limit of £14,250, they will not need to contribute to the cost of their care and support from their capital.
17. Where a person has accrued a debt, the local authority may use its powers under the Care Act to recover that debt. In deciding how to proceed, the local authority should consider the circumstances of the case before deciding a course of action. For example, a local authority should consider whether this was a deliberate avoidance of payment or due to circumstances beyond the person's control.

### **What happened**

18. Mrs D lived on her own in a property she owned but was diagnosed with dementia in 2014. She received informal support from her son and daughter-in-law, Ms B. They said Mrs D relied on them to complete grocery shopping which they paid for due to her limited income.
19. In 2016 the Council had contact with Mrs D about her social care needs. The Council said Mrs D did not need any social care support at the time.
20. In mid-2018 Mrs D decided to sell her home and her family helped her to apply to the district council for housing accommodation. Mrs D had experienced falls at home so needed level access accommodation. The Council's records show details of Ms B's request for an occupational therapy assessment as Mrs D struggled with stairs. After the sale of the property completed Mrs D moved to her son's and Ms B's home. Ms B provided her with informal care and support while she waited for the district council to provide accommodation. A short while later Ms B had an operation and said she was unable to continue caring for Mrs D. She contacted the Council for advice and assistance.
21. Ms B contacted the Council due to the difficulties she was having, and it provided advice and information about respite care. Mrs D went into a residential care home for respite in December 2018 which was arranged by her family. At this time Mrs D had enough capital above the capital limit to self-fund the residential placement.
22. The care home contacted the Council in February 2019 about Mrs D's finances. The care home asked for a financial assessment and said they were concerned as Mrs D did not have a social worker but needed a review of her care needs.

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The Council's notes states "*daughter and son are dealing with finances but thought the threshold was £13,000 and are now below the threshold of £23,250*".

23. The Council's officer visited Mrs D in the care home and completed a care and support assessment. The Council said Ms B was present at the assessment as well as a representative from the home. The assessment recorded that Mrs D could not manage her finances independently and had support from her son to do so. However, no legal documents were in place such as an enduring or lasting power of attorney. The assessment noted that Mrs D had an Appointee for her state benefits but did not record the details of the person.
24. The Council started to fund Mrs D's care fees from April, and it said Ms B completed a financial assessment form in May. After this it considered deprivation of assets. In May, its Financial Assessment Officer (FAO) went to visit Mrs D in the care home to complete a financial assessment.
25. A council officer completed a mental capacity decision to assess whether Mrs D had capacity to agree to the placement. The assessor concluded Mrs D had capacity to make this specific decision. Following a review of Mrs D's care needs the placement became permanent.
26. The Council wrote to Mrs D at the care home after the financial assessment. In summary it said:
  - it had calculated Mrs D's savings fell below the maximum capital threshold of £23,250 in April 2019;
  - she had been assessed to pay the full cost of her care which at the time was £588 weekly;
  - the FAO had told her at the time of the visit in the care home an amount of £30,000 she had gifted to her son and Ms B would be included as if she still had these savings herself to pay for her care needs; and
  - the Council would now be paying the care home on Mrs D's behalf.
27. Mrs D's son was unhappy with the decision made by the Council and so complained. The Council replied to the complaint and specifically about the £30,000 gift it said it was entitled to recover the lost income from charges in line with the Care Act 2014. So, it could assess how much she could afford to pay as if she still possessed the asset and recover 'lost income' from Mrs D. The complainant then asked the Ombudsman to consider the complaint.

## Findings

28. The information provided by the Council suggests Mrs D was diagnosed with dementia as early as 2014. Although the Council did not provide her with formal support it had information to suggest Mrs D had difficulty managing her finances a few years before she needed formal support.
29. There is no dispute about whether Mrs D needed respite at the time she went into the residential care home. Ms B and her husband say they did not decide for the placement to be permanent as Mrs D was waiting for council accommodation to be provided. On the evidence available, it is likely Mrs D herself decided to stay in the placement.
30. The Council completed capacity assessments to ensure Mrs D could make the decision. The assessment of her needs showed she needed care and support for at least 12 hours daily. If her needs were to be met in the community it is likely Mrs D would need regular informal care and/or a substantial formal home care

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- package in place. The Council's assessor also recorded sheltered housing would have been unsuitable to meet Mrs D's care needs. I do not find fault in the way the Council supported Mrs D's decision to make the placement permanent.
31. Ms B and her husband say Mrs D repaid them £30,000 after she sold her house for debts she had accrued when they paid for her groceries and paid some bills over several years. The Council has asked them to provide receipts so it can consider reviewing its decision. Ms B said the payments were made in cash which explains why it may be difficult to provide receipts.
32. The C&SSG says, "*when undertaking or reviewing a financial assessment a local authority may identify circumstances that suggest that a person may have deliberately deprived themselves of assets in order to reduce the level of the contribution towards the cost of their care... But 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 explore this first.*"
33. On the evidence available, it is likely the Council has done some exploration to find out why Mrs D no longer has the asset. For example, it has spoken to Mrs D's son and Ms B and asked them to provide receipts to show how the debt accrued. I do not find fault in relation to this action.
34. The information in the Council's files confirms Mrs D was not managing her finances independently before she moved to the care home. The assessment completed by the Council after Mrs D had moved to the care home confirmed she could not manage her finances independently and received support to do so. It is unclear whether Mrs D completed the transaction to transfer the funds in dispute or someone did this on her behalf.
35. The information in the Council's files suggest there is doubt about Mrs D's capacity to make financial decisions. In addition, it was already aware she had an impairment or disturbance in the functioning of her mind because she had dementia. Despite this the Council's FAO went to discuss finances in the care home with Mrs D. Following this visit the Council's finance department wrote to Mrs D about the debt. The Council should have taken reasonable steps to establish Mrs D's capacity to make specific financial decisions. For example, it should have completed a formal mental capacity assessment. The Council did not do this and is at fault.
36. The Council was also aware that Mrs D did not have a Deputy to deal with her property and financial affairs. It recorded she had an Appointee for benefits but did not record the name of that person in the assessment. This is fault. If the Council had completed a capacity assessment to decide whether Mrs D could manage her finances, it could have then considered her best interests if the capacity assessment determined she lacked capacity. Although the Council refers to best interests in its case records it has not followed a formal process. I find the Council at fault.
37. In addition, the C&SSG says, "*where the person has transferred the asset to a third party to avoid the charge, the third party is liable to pay the local authority the difference between what it would have charged and did charge the person receiving care. However, the third party is not liable to pay anything which exceeds the benefit they have received from the transfer.*" In Mrs D's case the funds have been transferred to a third party. Therefore, I find fault in the way the Council decided to pursue Mrs D for the debt.

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38. The Council said it did not consider pursuing the recipient of the gifted funds in line with the Care Act 2014. It said it reached this decision on the basis that Ms B was experiencing stress and anxiety due to the financial situation and because of her health issues. The Council was entitled to make this decision.
39. When the Council wrote to Mrs D said it would pay the care home on her behalf. In response to the Ombudsman's enquiries the Council confirmed it has funded the placement from April 2019. Ms B and her husband want the Council to pay Mrs D's care fees as an outcome to this complaint, but it appears the Council is already doing so. Therefore, it is not necessary for the Ombudsman to consider making a recommendation about this specific point. The debt in dispute relates to how much the Council assessed Mrs D needed to contribute to her care costs.

### **Conclusion**

40. The Ombudsman cannot decide whether deprivation of assets has occurred in this or any case. It is up to councils to decide whether someone (or a third party) has deliberately deprived themselves of assets to avoid paying care fees. The Council was entitled to consider the £30,000 gift when it assessed Mrs D's finances. The C&SSG says, it is important for people to pay the contribution to their care costs they are responsible for. This is important to the overall affordability of the care and support system.
41. The Care Act 2014 gives councils powers to recover a debt which has accrued because of deprivation of assets. The C&SSG says councils should "*consider the circumstances of the case before deciding a course of action. For example, a local authority should consider whether this was a deliberate avoidance of payment or due to circumstances beyond the person's control*". It is up to the person to prove to the Council that they no longer have the asset.
42. The Ombudsman is concerned about Mrs D's ability to understand the financial implications of this debt situation. There is doubt about her capacity to make and understand financial decisions. It is unclear whether she has suitable support in place to help her manage her finances.
43. There is fault in the way the Council decided to pursue Mrs D for the debt. This causes a potential injustice if Mrs D is found to lack capacity to make specific financial decisions. The Council should act to assess her capacity and consider her best interests if necessary. The Council should properly consider the circumstances of this case before it continues to pursue the debt. Once it has done so it may then decide the best course of action, for example, continuing with its decision to pursue the debt.

### **Agreed action**

44. The Council has agreed to the Ombudsman's recommendations and within four weeks of the date of the final decision it will:
- assess Mrs D's capacity to understand and make specific financial decisions;
  - considers Mrs D's best interests if the assessment determines she lacks capacity;
  - decides who is best placed to manage Mrs D's finances if she cannot do so herself and if there is no other suitable person to act on her behalf;
  - considers whether any injustice has been caused to Mrs D pending the outcome of the capacity assessment;

- 
- writes to Ms B and her husband to confirm what action it will take regarding the debt once it has properly considered the full circumstances of this case;
  - remind its staff of the importance of completing capacity assessments when there is doubt about a person's capacity to make specific decision. This should be reiterated to its social work and financial assessment team in particular; and
  - provide an update to the Ombudsman to show the outcome of the assessment, any actions taken in Mrs D's best interests if appropriate, what it has done to put things right if there has been injustice and confirm its further decisions about the debt.

### **Final decision**

45. I have completed my investigation and uphold Ms B's complaint. The Council was entitled to pursue the debt but there is fault in the way the Council decided to pursue the debt, and this caused injustice to Mrs D. I am satisfied the action the Council will take to complete the agreed recommendations will remedy the injustice caused.

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



6 January 2021

Agenda Item:5

## **REPORT OF SERVICE DIRECTOR FOR FINANCE, INFRASTRUCTURE & IMPROVEMENT**

### **COUNTER-FRAUD PROGRESS REPORT**

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

1. To update the Governance and Ethics Committee on the counter-fraud work undertaken to date in 2020/21.

#### **Information**

2. Despite the Covid pandemic counter-fraud work has continued to focus on key risk areas during 2020/21 and the Council has remained vigilant to the threat of fraud and emerging risks.
3. The report brings together work undertaken in relation to:
  - National Fraud Initiative (NFI) - outcomes from the 2018-20 exercise;
  - Counter-fraud activities – to provide an update on recent, pro-active work; and
  - Counter-fraud action plan progress - an update on progress made against the action plan.

#### **National Fraud Initiative**

4. The Council participates every two years in the compulsory NFI exercise. Data matching reports were generated from the exercise, comparing NCC data to data sources such as the Driver & Vehicle Licensing Agency (DVLA), mortality data, and the Department for Work & Pensions (DWP). The NCC outcomes for the 2018-20 exercise are shown below in **Table 1**, which compares 2018-20 outcomes alongside the outcomes of the 2016-18 exercise.

**Table 1 – Headline Categories of Fraud for NCC - 2016-18 & 2018-20**

<b>Category</b>	<b>NCC 2016-18</b>	<b>NCC 2018-20</b>
Pension Overpayments (Deceased)	£*	£83,028
Personal budgets	£5,848	£2,049
Trade Creditors	£1,498	£0
Payments to Private Care Homes for Deceased Persons	£0	£6,409
<b>Total</b>	<b>£7,346</b>	<b>£91,486</b>
<b>Other significant results</b>		
Blue Badges cancelled or withdrawn (no's)	*	576 cases

Category	NCC 2016-18	NCC 2018-20
Concessionary Travel Passes Cancelled (no's)	2	115 cases

\* Figures not previously recorded, although checks were undertaken

5. The outcomes show an increase in the values identified from pro-active review across the Council. Key points to note about the exercise are:
  - 14,121 matches were generated, of which 1,533 matches were recommended for high priority review.
  - Whilst no cases of fraud have been confirmed through NFI, a total of £91,486 has been identified for recovery. £83,028 relates to pension payments which were made in error, which represents 0.05% of the £170m pension payments per annum. To date 88% of the payment errors have been recovered. Typically, these are cases where entitlements have ceased, but the Council has not yet been notified of a change in circumstances. The other £8,458 has been recovered in relation to payments made in error to two separate care homes after the person's death.
6. Since the 2016-18 NFI exercise, NCC has engaged in the Cabinet Office's Re-Check facility. This provides the opportunity to resubmit data sets for matching against more recent data sources, thus providing more up-to-date match records.
7. To date the only data reviewed in the Re-check exercise process has been mortality data referred to above (para 4) to conduct Pension data matches.

### ***Counter-fraud E-learning and Other Activities***

8. The Counter-fraud e-learning materials were released to all staff through the intranet in July 2018. Since its release, the training package has been completed by 963 staff. **Table 2** below shows the breakdown of completions across departments and as a percentage of the total. This shows the Place department having the lowest take-up, which we have used to inform our fraud risk assessment.

**Table 2 – Completion of Counter-fraud E-learning**

Department	Completions to Dec 2018	%	Completions to Oct 2019	%	Completions to Oct 2020	%
ASCH	56	32%	306	34%	308	32%
Chief Executives	65	37%	240	27%	241	25%
C&F	44	25%	192	21%	192	20%
Place	12	6%	53	6%	71	7%
Other External /	0	0%	111	12%	151	16%
<b>Total</b>	<b>177</b>		<b>902</b>		<b>963</b>	



9. We have continued to monitor the completion of the training and have undertaken a further re-launch of the e-learning materials as part of International Fraud Awareness Week, which ran from 15 – 21 November 2020. The re-launch involved a Team Talk article to raise awareness of fraud. and to remind staff of the training available and how to protect the Council and themselves from fraud. However, given the time the fraud awareness training material has now been in circulation, it is probably due a refresh and will be included on our action plan.
10. In our Annual Fraud Report we reported on how the Council's insurers, Zurich Municipal, had worked with the Risk and Insurance Team to provide fraud awareness training. This training was expanded to include engagement with the Council's Counter-Fraud Specialist to share knowledge and experience and access to industry networks.
11. The Risk and Insurance Team remain vigilant to potentially fraudulent claims and continue to undertake pro-active detection work. The team have also been active in the successful defence of claims made against the council and have recently generated estimated savings of £78,800 through such work.
12. Internal Audit continues to be involved in fraud investigation activities and are currently involved in seven live cases. The developments and outcomes are reported to the Chairman of this committee through regular updates with the Group Manager and summarised to all members in the Annual Fraud Report.
13. Whilst attempts to commit fraud still continue to occur, we do have measures in place to identify, prevent and address these. Staff in the Business Service Centre are vigilant to supplier mandate frauds and we are still actively engaged with reporting these cases to Action Fraud. We will continue to report our findings and recommendations to management in relation to recommended redress and /or strengthening of the control environment.
14. We have previously reported our engagement with the Government Agency Intelligence Network (GAIN), which sits within each Regional Organised Crime Unit (ROCU). GAIN helps to facilitate information sharing between partner agencies to identify potential matches with known serious organised crime targets. The first 'data washing' exercise was completed last year and no targets were identified from the sample data provided. A further data washing exercise has recently taken place and it is reassuring to note that there were none that hit the organised crime gangs (OCG) tracker with any concerns of note. Further 'data washing' exercises will continue to be undertaken in the future.

### ***Fighting Fraud and Corruption Locally (FFCL) Strategy and Checklist***

15. FFCL 2020 is a national strategy, developed jointly by central government and Cifas (a not-for-profit fraud prevention membership organisation). It is aimed at providing a coordinated approach to tackling fraud locally.
16. We have used FFCL 2020 to review and relaunch our own counter-fraud strategy. The national strategy contained a recommendation for organisations to consider their options in relation to providing counter-fraud coverage and provided a self-assessment checklist for completion. Internal Audit recently completed the self-assessment for the Council, and the outcome is presented in **Appendix A** and is now being shared with members of the Governance and Ethics Committee. Stakeholder actions are now substantially complete or work in progress

apart from the action for consultation with counter-fraud staff in order to fraud-proof new policies, strategies and initiatives across departments which will be given further consideration. The completed FFCL checklist provides positive assurance of the counter-fraud measures we have in place. We will continue to monitor progress with implementation of actions in **Appendix A** and report back to members.

17. We have also updated the Counter Fraud Risk Assessment 2020-21 to capture FFCL emerging issues, along with emerging COVID19 related risks (e.g. supply chain fraud, grant fraud etc.) that have surfaced through our connections with national fraud networks (see further details below). The risk assessment identified six potential high priority areas for the consideration of pro-active counter-fraud work. This includes post-payment assurance which incorporates the checking of emergency and non-routine payments during the pandemic. Work is already in progress by Internal Audit to test for potentially fraudulent activity that has occurred in relation to such payments during the Covid-19 crisis. These pieces of work are incorporated into our termly planning, and key findings will be shared with Members.
18. It remains a key area of focus for the Internal Audit team to support the Council's pandemic response through the provision of timely advice and consultancy on appropriate counter-fraud measures and internal control. Outcomes from this work will continue to be reported to Members as part of our termly updates.

### ***Counter Fraud Networks and National Picture***

19. We continue to disseminate information from other bodies e.g. National Anti-Fraud Network (NAFN) and Cifas, including several recent alerts following Covid.
20. Nottinghamshire County Council took part in the annual Chartered Institute of Public Finance and Accountancy (CIPFA) Fraud and Corruption Tracker (CFACT) survey in 2020. The survey gives a national picture of fraud, bribery and corruption across UK local authorities and the actions being taken to prevent it. It aims to help organisations understand where fraud losses could be occurring, provide a guide to the value of detected and prevented fraud loss, help senior leaders understand the value of counter-fraud activity and assist operational staff to develop pro-active, counter-fraud plans. The results of this survey will be published in a national report in early 2021 and will feature in the next annual fraud report to Members in 2021.
21. We also participate in the Midland Counties Counter Fraud Group, where we share ideas and best practice on fraud.

### ***Counter Fraud Action Plan Progress***

22. We have reviewed the implementation of actions within the Counter-Fraud Action Plan which was reported to the Governance and Ethics Committee in September 2020. Attached is an update on progress for each of the outstanding actions in **Appendix B**. All previously completed actions have been removed from the current action plan.
23. During our work we have identified that the Council's Counter-Fraud and Counter-Corruption Strategy and Fraud Response Plan require review and updating. The review will ensure the key documents are updated and complement each other. We will work with stakeholders such

as legal and finance colleagues to review these strategies. This will be monitored through the Counter Fraud Action Plan and is recorded as an action in **Appendix B**.

### **Other Options Considered**

24. The Audit Section is working to the Public Sector Internal Audit Standards and the contents of the Counter Fraud Action Plan. This report follows the requirements of the Standards to undertake a risk-based approach to counter fraud work and report progress and outcomes of such work. No other option was considered.

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

25. To report the progress made by the Group Manager – Assurance in undertaking counter fraud work.

### **Statutory and Policy Implications**

26. 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.

#### **Crime and disorder**

The Council's Counter-Fraud Policy provides for a zero-tolerance approach to fraud and corruption. The Fraud Response Plan provides for all suspected cases being considered for referral to the Police for investigation.

#### **Human Resources implications**

Under the zero-tolerance approach in the Council's Counter-Fraud Policy, all suspected cases involving members of the Council's staff are investigated and consideration given to disciplinary proceedings.

#### **Financial Implications**

Any money lost to fraud is money that cannot be spent delivering critical public services to the citizens of Nottinghamshire. The Annual Fraud Report for 2019/20 was presented to the Governance & Ethics Committee in September 2020 and identified that the value of detected or prevented fraud in that year amounted to approximately £2.67m.

## **RECOMMENDATIONS**

- 1) Committee considers whether it wishes to see any additional actions put in place to tackle fraud or to receive further reports on the actions already being taken within the Council.

**Nigel Stevenson**

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

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

Rob Disney

Group Manager – Assurance

**Constitutional Comments (KK – 08/12/2020)**

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

**Financial Comments (RWK – 07/12/2020)**

28. 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

## **Fighting Fraud and Corruption Locally Strategy 2020**

### **Counter Fraud Strategy 2020-21 – Review of FFCL Strategy Appendix 1 and 2 Checklists**

#### **Appendix 1 – Questions**

<b><i>What should senior Stakeholders do?</i></b>		
<b>Question</b>	<b>Response</b>	<b>Status</b>
<b><i>The Chief Executive</i></b>		
1- Ensure that your authority is measuring itself against the checklist for FFCL.	Aware and assessment has been undertaken.	Complete
2- Is there a trained counter fraud resource in your organisation or do you have access to one?	Yes – Counter Fraud Officer.	Complete
3- Is the audit committee receiving regular reports on the work of those leading on fraud and is the external auditor aware of this?	Yes – routine reporting to G&E and external auditor aware.	Complete
<b><i>The Section 151 Officer</i></b>		
1- Is there a portfolio holder who has fraud within their remit?	Yes – Chairman of the G&E committee.	Complete
2- Is the head of internal audit or counter fraud assessing resources and capability?	Yes – Head of Internal Audit and Counter Fraud Officer.	Complete
3- Do they have sufficient internal unfettered access?	Yes – to CEX and Leader.	Complete
4- Do they produce a report on activity, success and future plans and are they measured on this?	Yes – Annual Report and Progress Report.	Complete
<b><i>The monitoring officer</i></b>		
1- Are members, audit committee and portfolio lead aware of counter fraud activity and is training available to them?	Yes – training and counter fraud awareness available.	Complete
2- Is the fraud team independent of process and does it produce reports to relevant committees that are scrutinised by members?	Yes – independent via Internal Audit and report to G&E.	Complete
<b><i>The Audit Committee</i></b>		
1- Should receive a report at least once a year on the counter fraud activity which includes proactive and reactive work.	Yes – Annual Report and Progress Report.	Complete
2- Should receive a report from the fraud leads on how resource is being allocated, whether it covers all areas of fraud risk and where those fraud risks are measured.	Yes – Counter Fraud risk assessment is completed at least annually and incorporated within internal audit termly planning to the audit committee termly.	Complete
3- Should be aware that the relevant portfolio holder is up to date and understands the activity being undertake to counter fraud.	Yes – Chairman aware and regularly briefed on fraud.	Complete
4- Should support proactive counter fraud activity.	Yes – supports the Internal Audit and Counter Fraud Plan.	Complete
5 – Should challenge activity, be aware of what counter fraud activity can comprise and link with	Yes – challenge and review of Internal Audit and Counter Fraud Plans.	Complete

<b>What should senior Stakeholders do?</b>		
<b>Question</b>	<b>Response</b>	<b>Status</b>
the various national reviews of public audit and accountability.		
<b>The portfolio lead</b>		
1- Receives a regular report that includes information, progress and barriers on the assessment against the FFCL checklist, fraud risk assessment and horizon scanning.	Initial assessment of the FFCL 2020 checklists to be shared and complemented with risk assessments and horizon scanning work.	Work in progress

## Appendix 2 – Questions

<b>Fighting Fraud and Corruption Locally Checklist</b>		
<b>Question</b>	<b>Response</b>	<b>Status</b>
1- The local authority has made a proper assessment of its fraud and corruption risks, has an action plan to deal with them and regularly reports to its senior Board and its members.	Risk assessment in place and has been updated for 2020-21 to incorporate emerging risks, including covid19 risks to develop action plans.	Complete
2- The local authority has undertaken a fraud risk assessment against the risks and has also undertaken horizon scanning of future potential fraud and corruption risks. This assessment includes the understanding of the harm that fraud may do in the community.	Risk assessment in place and has been updated for 2020-21 to incorporate emerging risks, including covid19 risks. The risk assessment has been updated to consider harm to the community.	Complete
3- There is an annual report to the audit committee, or equivalent detailed assessment, to compare against FFCL2020 and this checklist.	Annual Report completed but not incorporating the FFCL checklist yet.	Work in progress
4- The relevant portfolio holder has been briefed on the fraud risks and mitigation.	Yes – incorporated within planning and risk on termly basis.	Complete
5- The audit committee supports counter fraud work and challenges the level of activity to ensure it is appropriate in terms of fraud risk and resources.	Yes – Plans, progress and annual reports completed.	Complete
6- There is a counter fraud and corruption strategy applying to all aspects of the local authority's business which communicated throughout the local authority and acknowledged by those charged with governance.	Yes – Counter Fraud and Corruption Strategy in place, reviewed annually and disseminated.	Complete
7- The local authority has arrangement in place that are designed to promote and ensure probity and propriety in the conduct of its business.	Yes – the Council operates within its constitution and codes of conduct.	Complete
8- The risks of fraud and corruption are specifically considered in the local authority's overall risk management process.	Fraud risks are considered but there is opportunity to refresh understanding and consideration.	Work in progress
9- Counter fraud staff are consulted to fraud-proof new policies, strategies and initiatives across departments and this is reported upon to committee.	Consultation is not consistent and not routinely reported to committee.	Consideration will continue to be given to this

<b>Fighting Fraud and Corruption Locally Checklist</b>		
<b>Question</b>	<b>Response</b>	<b>Status</b>
10- Successful cases of proven fraud/corruption are routinely publicised to raise awareness.	This is limited to the volume of cases proven and limited publicity.	Consideration will continue to be given to this
11- The local authority has put in place arrangements to prevent and detect fraud and corruption and a mechanism for ensuring this that this is effective and reported to committee.	Yes – this is through the joint working of internal audit and counter fraud within the Counter Fraud and Corruption Strategy and supporting documents.	Work in progress
12- The local authority has put in place arrangements for monitoring compliance with standards of conduct across the local authority covering: <ul style="list-style-type: none"> <li>Codes of conduct including behaviour for counter fraud, anti-bribery and corruption.</li> <li>Register of interests.</li> <li>Register of gifts and hospitality.</li> </ul>	Yes – arrangements are in place corporately and within departments which are subject to review by the monitoring officer and internal audit. Work continues in response to the AGS risks to review Code of Conducts through the MO and Legal Services.	Work in progress
13- The local authority undertakes recruitment vetting of staff prior to employment by risk assessing and undertaking the checks recommended in FFCL 2020 to prevent potential dishonest employees from being appointed.	Yes – recruitment checks identify risk posts and employ checks in line with FFCL 2020.	Complete
14- Members and staff are aware of the need to make appropriate disclosures of gifts, hospitality and business. This is checked by Auditors and reported to committee.	Yes – this is part of the codes of conduct and is reviewed by Internal Audit. Work continues in response to the AGS risks to review Code of Conducts through the MO and Legal Services.	Work in progress
15- There is a programme of work to ensure a strong counter fraud culture across all departments and delivery agents lead by counter fraud experts.	Yes – The Counter Fraud Officer promotes the strong culture across departments and includes liaison with internal and external experts such as Trading Standards, Police, GAIN etc.	Complete
16- There is an independent and up-to-date whistleblowing policy which is monitored for take-up and can show that suspicions have been acted upon without internal pressure.	Yes – The whistleblowing policy is up-to-date and independently monitored by the monitoring officer.	Complete
17- Contractors and third parties sign up to the whistleblowing policy and there is evidence of this. There should be no discrimination against whistle-blowers.	Yes – compliance with whistleblowing policy and the implications are part of the procurement processes for contractors and third parties.	Complete
18- Fraud resources are assessed proportionately to the risk the local authority faces and are adequately resourced.	Risk assessment completed and allocation follow the risks assessments from available resources.	Complete
19- There is an annual fraud plan which is agreed by committee and reflects resources mapped to risks and arrangement for reporting outcomes. The plan covers all areas of the local authority's business and includes activities undertaken by contractors and third parties or voluntary sector activities.	There is a risk plan but needs to move to the termly basis. The risk assessment covers business risks but may need to be extended to cover contractors, third parties and voluntary sector.	Work in progress



<b>Fighting Fraud and Corruption Locally Checklist</b>		
<b>Question</b>	<b>Response</b>	<b>Status</b>
20- Statistics are kept and reported by the fraud team which covers all areas of activity and outcomes.	Yes – this is recorded with the irregularity's registers, Pentana and activities are reported within the termly reporting.	Complete
21- Fraud officers have unfettered access to premises and documents or the purpose of counter fraud investigations.	Yes – unfettered access is provided to fraud officers.	Complete
22- There is a programme to publicise fraud and corruption cases internally and externally which is positive and endorsed by the council's communications team.	Publication of cases is limited but case studies are used to support the counter fraud awareness materials.	Consideration will continue to be given to this work
23- All allegations of fraud and corruption are assessed.	All referrals are assessed by the Counter Fraud Officer. Work continues to ensure that all cases are subject to a referral by management.	Work in progress
24- The fraud and corruption response plan cover all areas of counter fraud work: <ul style="list-style-type: none"> <li>• Prevention.</li> <li>• Detection.</li> <li>• Investigation.</li> <li>• Sanctions .</li> <li>• Redress.</li> </ul>	Yes – the Fraud Response Plan covers each of the areas and is refreshed annually to ensure remains up-to-date.	Work in progress
25- The fraud response plan is linked to the audit plan and is communicated to senior management and members.	Yes – the fraud response plan is part of the internal audit activity and reviewed by management and members.	Complete
26- Asset recovery and civil recovery are considered in all cases.	Yes – recovery of assets and civil recovery are considered in cases and a redress	Complete
27- There is a zero-tolerance approach to fraud and corruption that is defined and monitored, and which is always reported to committee.	Yes – the council endorses a zero-tolerance approach with is defined at all levels.	Complete
28- There is a programme of proactive counter fraud work which covers risk identified in assessments.	The Counter Fraud Risk Assessment identifies topics for proactive review. There is a proactive element to the fraud work which is include in planned activity for either counter fraud or internal audit.	Complete
29- The counter fraud team works jointly with other enforcement agencies and encourages a corporate approach and co-location of enforcement activity.	Yes – joint work in undertaken with the police and GAIN along with co-ordinated activity in other areas such as Trading Standards.	Complete
30- The local authority shares data across its own departments and between other enforcement agencies.	Data sharing is limited across departments and data is shared with government agencies through NFI and GAIN.	Work in progress
31- Prevention measures and projects are undertaken using data analytics where possible.	Data analytics are used where possible and shared with other agencies. Developments with Continuous Audit will incorporate counter fraud measures.	Work in progress
32- The counter fraud team has registered with the Knowledge Hub, so it has access to directories and other tools.	Counter Fraud Officer is registered with the Knowledge Hub to share intelligence.	Complete



<b>Fighting Fraud and Corruption Locally Checklist</b>		
<b>Question</b>	<b>Response</b>	<b>Status</b>
33- The counter fraud team has access to the FFCL regional network.	Yes – via Rachael Tiffen at Cifas and the Knowledge Hub.	Complete
34-There are professionally trained and accredited staff for counter fraud work. (If auditors undertake counter fraud work, they too must be trained in this area.)	Yes – Internal Audit staff are professionally trained and accredited staff.	Work in progress
35- The counter fraud team has adequate knowledge in all areas of the local authority or is trained in these areas.	Yes – the team have knowledge and experience supported by internal audit knowledge.	Complete
36- The counter fraud team has access (through partnership/other local authorities /or funds to but in) to specialist staff for: <ul style="list-style-type: none"> <li>• Surveillance.</li> <li>• computer forensics.</li> <li>• asset recovery.</li> <li>• financial investigations.</li> </ul>	The counter fraud team has access to such resources either within the Council, through collaboration or from brought in services.	Complete
37- Weakness revealed by instances of proven fraud and corruption are scrutinised carefully and fed back to departments to fraud-proof systems.	Yes – post incident reviews are undertaken, and a report generated recommending action as a result of the incident to strengthen internal control processes.	Complete



## Counter-Fraud Action Plan

The following sets out a summary of progress against the actions included in the previous annual fraud report, followed by new actions for 2020/21.

Action	Timescale	Responsibility	Progress & revised timescale
<b>New and Ongoing Actions for 2020/21</b>			
Pro-active work with the Travel & Transport team to respond to the threat of Blue Badge and Concessionary Travel Fraud	April 2021	Head of Internal Audit	<b>Partially Achieved &amp; Ongoing</b> – Blue Badges have been cancelled using the latest NFI data.  Ongoing work with Concessionary Travel regarding assurance checks and internal controls with a view on fraud controls as well.
Work with Legal Services to develop a proposed protocol for the pursuit of private and civil prosecutions.  This will be included in a wider review of the Counter Fraud and Corruption Strategy and the Fraud Response Plan	April 2021	Head of Internal Audit with the assistance of the Head of Legal Services	<b>Partially Achieved</b> – Initial feedback with legal services. This will be taken forward as part of the 2020/21 action plan.
Review the Fighting Fraud and Corruption Locally strategy and complete Counter Fraud Checklists.	September 2020	Head of Internal Audit	<b>Achieved</b>
Address work in progress and emerging issues from the Fighting Fraud and Corruption Locally checklist.	March 2021	Head of Internal Audit	<b>Ongoing</b>
Review the findings from the Ministry of Housing and Local Communities (MHCLG) – Fraud and Corruption in LG Procurement Work with the procurement team.	April 2021	Head of Internal Audit	<b>Ongoing</b>

Action	Timescale	Responsibility	Progress & revised timescale
Incorporate 'Post Payment Assurance' work within future pro-active work during the recovery phase of Covid 19	March 2021	Head of Internal Audit	<b>Ongoing</b> – scope for work has been agreed and field work is under way.
Increased oversight of the risk management process to ensure that risks are appropriately managed.	March 2021	Head of Internal Audit	<b>Ongoing</b> – the corporate risk register has been reviewed and further updates will be provided to G&E Committee.
Continue to work with GAIN for data-washing exercises.	November 2020	Head of Internal Audit	<b>Complete</b> – exercise undertaken and no OCG matches found.
Review of the Counter Fraud and Corruption Strategy and the Fraud Response Plan.	March 2021	Head of Internal Audit with the assistance of the Head of Legal Services	<b>Ongoing</b>
Disseminate insight and responses to fraud alerts through 'Team Talk' to coincide with International Fraud Awareness Week.	November 2020	Head of Internal Audit	<b>Complete</b> – Fraud awareness week material shared by Team Talk.

6 January 2021

Agenda Item: 6

**REPORT OF SERVICE DIRECTOR FOR PLACE AND COMMUNITIES****EUROPEAN UNION TRANSITION RISK AND REGISTER****Purpose of the Report**

1. To inform members of the consideration given to risks for the Council arising from the UK's transition from the European Union (EU).

**Information**

2. Members will be aware from previous reports to the Committee that the UK's transition from the EU has been flagged as a significant issue in the Council's Annual Governance Statement (AGS) for the past few years. The AGS gives rise to a rolling Governance Action Plan for the Council, which is kept under continual review and reported the Committee on a regular basis. The most recent update in October 2020 contained the following with regard to EU transition:

**Brexit implications for  
the Council**

With ratification of the Withdrawal Agreement, the UK left the EU with a deal on 31 January 2020. The Government has now moved into a transition / implementation period in which it is negotiating its future relationship with the European Union. The Government's position is that it is expected to have a trade and other relevant agreements in place by December 2020. The Council's risk assessment is being updated to ensure appropriate mitigations are planned for the scenario that trade negotiations are not be completed in this timescale.

3. The risk register, referred to above, was initiated soon after the referendum result in 2016. Using a network of appropriate managers across the organisation, the implications for the Council of Brexit and EU transition have been identified, risk-assessed and kept under regular review to keep in step with developments. This topic has been the subject of a number of Freedom of Information requests since the date of the referendum, and the risk register has been released when requested.
4. The Council's corporate approach to risk management has been applied in drawing up and maintaining the register:
  - To identify risk sources and triggers for the Council's services through the transition period
  - To identify current controls in place which mitigate either the likelihood or impact of the risk

- To keep under consideration whether any additional actions are warranted to further mitigate assessed risk levels.
5. The up-to-date risk register for EU Transition is attached as Appendix 1, which is formed of two parts:
    - Part 1 – sets out a summarised entry for the Council’s corporate risk register, highlighting the key areas for attention and an overall risk rating
    - Part 2 – the detailed register, itemising each risk source/trigger, current mitigations and a Red/Amber/Green (RAG) rating for each entry.
  6. The risk register confirms that the Council’s risk exposure on this issue is not assessed to be significant. The Council has been, and continues to be, pro-active in keeping developments under review and taking all reasonable actions to safeguard the continuity of essential services.
  7. At the time of submitting this report, the nature of the UK’s trading relationship with the EU from 1 January 2021 was still unclear. Committee will be updated on any significant change in risk for the Council as a result of subsequent developments.

### **Other Options Considered**

8. The Council is committed to keeping its key risks and significant governance issues under regular assessment and review, therefore the option of not recognising EU transition as a matter for active risk management was rejected.

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

9. To provide Members with the opportunity to consider whether any further reports or actions are required to help safeguard the Council’s essential services in the immediate, post-EU transition period.

### **Statutory and Policy Implications**

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

The network of Service Directors and Group Managers who have been regularly consulted in the establishment and maintenance of this risk register have contributed their input to set out the potential implications for a number of statutory and policy implications. In particular, the risk register details considerations in relation to: crime and disorder; data protection and information governance; finance; and human resources.

## **RECOMMENDATION/S**

1) Members determine whether there are any further reports or actions required at this time, and Members agree to receive a further update on the EU transition risk register as part of the scheduled reports on corporate risk management and the Council's governance action plan.

**Derek Higton**  
**Service Director – Place and Communities**

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

Rob Disney  
Group Manager – Assurance

### **Constitutional Comments (EKH 08/12/2020)**

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

### **Financial Comments (RWK 07/12/2020)**

12. 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





# NCC CORPORATE RISK REGISTER – 4 DECEMBER 2020

Relative Impact	Catastrophic	(5)	M	H	VH	VH	VH
	Significant	(4)	M	H	VH	VH	VH
	Moderate	(3)	M	M	H	H	H
	Minor	(2)	L	L	M	M	M
	Insignificant	(1)	L	L	L	L	L
			Rare (1)	Unlikely (2)	Possible (3)	Likely (4)	Almost certain (5)
Relative Likelihood							

LIKELIHOOD		
1	Rare	0 to 5% chance
2	Unlikely	6 to 20% chance
3	Possible	21 to 50% chance
4	Likely	51 to 80% chance
5	Almost certain	81%+ chance
IMPACT		
1	Insignificant	0 to 5% effect
2	Minor	6 to 20% effect
3	Moderate	21 to 50% effect
4	Significant	51 to 80% effect
5	Catastrophic	81%+ effect

## Guidance Notes and definitions

- The term “risk” used in this register is defined by the Institute of Risk Management as the “combination of probability of an event and its consequences” (ISO/EC Guide 73)
- This Corporate Risk Register sets out the key risks to NCC that have been identified by Risk Owners.
- Risk Owners are officers who are responsible for identifying the key risks to the organisation and for implementing and managing the controls to mitigate those risks.
- Sources and triggers for each risk have been identified and the possible consequences of failure to address each risk have been determined.
- Current controls and mitigations have been listed for each risk and these identify the controls presently in place that are designed to address the risks.
- Additional controls required and new controls that are being introduced are also recorded in the register. This identifies any gaps in controls and provides details of new controls that management are intending to introduce, to address these gaps, or are implementing to strengthen existing controls.
- For each of the identified risks, inherent, current and residual risk scores have then been determined.
- Inherent risk is defined as the amount of risk that would exist in the absence of any controls.
- Current risk is defined as the amount of risk assuming the current mitigations are being applied.
- Residual risk is the amount of risk that will remain after proposed actions are put in place.
- In conjunction with this Risk Register, Internal Audit has completed a number of assurance maps, which categorise the mitigating controls for each risk under one of three “lines of defence”. These are:
  1. Controls established by management to provide oversight of identified risks (for example, the implementation of policies and Committee reviews)
  2. On-going Internal controls applied by management applied to manage and control day to day operations (for example, reconciliations and performance reports)
  3. Third party assurance (independent oversight of risk management by auditors and other independent bodies such as the CQC and Ofsted)

The current controls and mitigations listed on this register to address the identified risks have been categorised on this basis.

## 12. Implications in the event of a no-deal Brexit

Risk Owner: Nigel Stevenson

### Sources & triggers:

- People (Council, partners and businesses) - An inability to recruit and retain staff in key skills shortage and 'hard to recruit' areas.
- Procurement - Suppliers or supply chain challenges post Brexit impacting on the Council's ability to deliver services.
- Finance and funding - Potential for post Brexit price increases, with the Council being unable to invest in its capital programme. This is coupled with the risk to 100% business rates retention and potential for delay in policy change and/or implementation.
- Data protection - UK legislation replacing EU legislation will introduce changes to UK Data Protection laws.
- Brexit preparations - Lack of overall Countywide joint planning to take advantage of opportunities presented by Brexit and to mitigate risks. This includes 'no-deal' preparation by gov and businesses.
- Devolution/ Local Government reorganisation - Government policy change or slows due to distraction of Brexit.
- Business (EU markets) - To retain full access to EU markets, businesses may relocate. Non-UK owned companies may leave UK marketplace.
- Business preparedness - Businesses failing to benefit from new trade arrangements. Alternatively, businesses may find new markets for goods and services.
- A fall in agricultural land prices after Brexit - Move from Common Agricultural Policy to Domestic Agricultural Policy.
- Community cohesion risk - Concern that a 'no deal' Brexit may lead to civil unrest or disillusionment during/after negotiations as neither leave nor remain voters feel their concerns are being met.

### Possible consequences:

- Impact on service delivery and quality, both direct provision and through partners (staff resources etc).
- Increase in service provision costs, reduced funding.
- Issues for residents and Council employees, particularly least advantaged and most vulnerable groups.
- Reduction in investment and Revenue Support Grants.
- Changes in policy and legislation – adaption to new processes and means of working.
- Businesses fail to prepare, relocate to within the EU or miss opportunities, increasing unemployment and reducing Council income from businesses.
- Reputational risk for not being fully prepared.
- More demand for assistance to get people back into work.
- Community disruption through reduced cohesion.
- Data protection and Information being stored outside of the UK.

### Additional controls & actions required:

Action	Timescale	Action owner
An update may be required to the Councils standing financial Instructions section 8 concerning procurement regulations at a future date.	As and when UK legislation on public procurement is implemented.	Kaj Ghattaora
Short term risks have been comprehensively planned for, the difficulty lies with the medium and long term, where the implications of the EU exit are currently unknown and whose effects may emerge more slowly and are therefore difficult to plan for.	Expected to start emerging during 2021.	TBD

### Current controls & Mitigations:

#### Line 1

- Interim workforce recovery strategy is developed to take the Council from September 2020 to May 2021.
- Council staff in Care roles, who have moved to the UK in the last 3 years have been briefed about the implications of EU-exit to alleviate concerns.

#### Line 2

- An action plan is in place for ASCH Quality & Market Management including a Brexit-specific risk log, sharing information at Provider Forums.
- Continuity of the supply of goods is raised with suppliers at regular contract management meetings.
- A network of 9 local authority chief executives, including Nottinghamshire County Council, has been established by MHCLG to share information on Brexit preparations and each council has also appointed a Brexit Lead Officer to work with central government and local services, businesses and residents in their area.
- Community cohesion and the risk of civil disturbance is addressed through the LRF.
- Establishment of a framework for budgetary control and investment strategy.

### Proposed Current Risk

L	I
2	3
M	

### Proposed Target Risk

L	I
2	2
L	

Brexit - Risks and Opportunities - December 2020								
	Category	Details of Risk	Potential implications	Impact	Likelihood	Mitigation Actions	Notes	Lead Officer
1	People - Council workforce	The Council has an inability to recruit and retain staff in key skills shortage and "hard to recruit to" areas.	Impact on service delivery	low	low	<p>Monitor progress of EU exit negotiations and impact on UK Employment Law/ Regulations.</p> <p>HR are working with services to consider the potential impact of Brexit on future skills needs, recruitment and retention issues and talent management as part of workforce planning and succession planning under the service planning framework. Work developing through the Workforce Recovery Group will consider the impact further as an interim workforce recovery strategy is developed to take us from September 2020 to May 2021. The flexibility demonstrated by the Council's workforce during the Covid situation provides a degree of assurance that employees will continue to adapt and learn from this experience. HR have participated in Home Office webinars regarding changes to immigration laws relating to EU nationals and information regarding settled status for those EU nationals wishing to live and work in the UK post Brexit has been published on the Council's website. All Council staff in START (Home Care), Day Care and Residential Care, who have moved to the UK in the last 3 years have been briefed about the implications of EU-exit in order to alleviate concerns and anxieties in relation to their employment status. HR will continue to engage with local and national networks to share knowledge and experience of preparation for Brexit and to ensure the Council continues to recruit and retain people with the necessary skills, knowledge and experience to delivery the council's priorities.</p>	<p>September 2020 - NCC has approximately 70 employees with their right to work evidenced by EEA or Swiss documents. UK Government has given guarantees that those working in UK pre Brexit vote will be legally entitled to continue working in UK post UK leaving EU. HR have been in contact with Reed to identify their Brexit planning. Skills for Care data shows 22,500 adult social care jobs in Nottinghamshire . In England, 110,000 jobs in adult care in England are vacant. <a href="https://www.bbc.co.uk/news/uk-england-45593814">https://www.bbc.co.uk/news/uk-england-45593814</a> . The Covid situation has placed significant demands a on the care sector and there is a potential shortage of suitably qualified care workers which will be exacerbated by the new controls on immigration. The Council's agency managed service contract eas retendered in September 2020 and REED were again the successful bidder, Their Brexit planning is now part of ongoing contract management.</p> <p>October 2020 - It is not believed that the contents of Michael Gove's letter alters the response provided to the updated Brexit Risk Register previously by HR in respect of employees. For absolute clarity, this response does not include the workforce issues from provider/commissioned services where a greater impact may arise</p>	Gill Elder
2	People - Providers and partners workforce	<p>Providers who deliver Council services and Providers who deliver Council services and partners who work alongside the Council to deliver support and services have an inability to recruit and retain staff in key skills shortage and "hard to recruit to" areas. Of specific importance are those delivering in the care, health and education sectors along with those in their supply chains. Financial fragility within parts of the care sector (perhaps compounded by winter pressures) are likely to be exacerbated by increased running costs following a no-deal exit from the EU. As a consequence, the viability of some smaller care providers may be challenged within a matter of weeks (leading to provider failures), and larger care providers after that.</p> <p>A report by the Independent Migration Advisory Committee found that 5.9% of social care staff were from the EU in 2017 and warned that restrictions on migrant social workers could put the sector under tremendous pressure.</p>	Impact on service delivery	low	low	<p>Monitor progress of EU exit negotiations and impact on UK Employment Law/ Regulations. HR are working with our agency managed service provider to ensure they are taking similar steps to us for our contingent workforces. ASCH and Children's who commission services to ensure external partners are prepared. Quality &amp; Market Management, risk-rate services and can focus on providers which may be particularly at risk (e.g. small providers). This also includes references to Direct Payments providers and micro providers. Information received from HM Government / DoH / NHS is sent to providers as and when it is received.</p>	<p>An action plan is in place for ASCH Quality &amp; Market Management which includes the following:</p> <ul style="list-style-type: none"> <li>• A Brexit-specific risk log</li> <li>• Sharing information at Provider Forums</li> <li>• Specific EU-exit awareness by individual officers and their portfolio of service providers</li> <li>• Linking work across community and residential care providers</li> <li>• Ensuring providers are responding to any significant implementations to their service area and that arrangements are incorporated into their business continuity plan</li> <li>• Ensuring new contracts include a reference to EU-exit</li> <li>• Communicating with providers in response to central government / DoH / NHS updates.</li> </ul> <p>In January 2019, providers were asked to confirm they have contingency plans to maintain service provision. All providers that the Council works with have plans in place as they are legally required to do.</p>	Gill Elder

	Category	Details of Risk	Potential implications	Impact	Likelihood	Mitigation Actions	Notes	Lead Officer
3	Procurement	Suppliers or supply chain challenges post Brexit impacting on the Council's ability to deliver services. This includes the availability of essential supplies including food and medicines. Any disruption at ports may impact the supply of medicines / medical products as 75% of the UK's medicines / medical supplies from the EU come in via the Short Channel Strait. There may be some disruption to PPE supplies but expected to be minimal. Any PPE supply that's sourced from the EU is likely to increase in cost and reduce in availability. However, only a small proportion is sourced from the EU and as such govt expects any disruption to be low. Government are implementing a layered approach to ensure PPE stocks are sufficient e.g. stockpiling, re-routing supply chains and trader readiness.	The LGA reports that very few public contracts are awarded to companies in other member states. Across Europe, only 1.6% of public contracts are awarded to companies in other member states. At present, the current procurement regulations will apply up until the end of the implementation period: 31 December 2020. From January 2021, a new e-notification service called Find A Tender will be used to post and view public sector procurement notices.	low	low	The procurement team are signed up to a PASS Procurement seminar on 'Preparedness for Brexit'. A watching brief will continue. An update may be required to our standing financial Instructions section 8 at a future date. Regular liaison is taking place with key suppliers to prepare for Brexit through ongoing contract review meetings. Nottinghamshire County Council also receives weekly updates from Crown Commercial Services through their Procurement Policy Notes. The East Midlands Heads of Procurement have also been in discussion with the Cabinet Office on the reform of the Public Procurement Rules which is currently been discussed.	ICT have engaged with the main supplier, SCC, to understand their Brexit contingency planning. PH services are commissioned, so there may be issues for providers around staffing (EU nationals), as well as supply of medication for treatment (e.g. substance misuse, sexual health, smoking cessation) and for communicable disease control (e.g. antiviral prophylaxis). All contract managers have been advised to start discussions on Brexit preparedness in contract review meetings. Notts County Council and LRF have resilient levels of PPE supplies and Government stockpile of PPE is being held.	Kaj Ghattaora
4	Shortages of essential supplies	A no-deal Brexit leads to shortages of medication, food. Government advice is that there should not be significant /widespread impact on fuel supplies). There may be some disruption to global and UK food supply chains, considering both end of transition period and concurrency with COVID. Due to the tightening of supply and increasing demand there may be agri-food shortages. Fresh food supply may be affected. There will likely be an increase in food / fuel prices that may impact on lower income households / vulnerable groups or lead to vulnerability. The food sector has reduced capacity to build stocks that were diminished due to COVID. May be an issue in building up stocks in the runup to Xmas	Issues for residents, Council employees and those of service providers, disruption in the community.	low	low	The County Council is planning and preparing for placing orders for alternative foodstuffs for school meals. County Enterprise Foods created a two-week contingency supply of frozen meals. There has been concern about the possibility of panic buying and the impact this may have on vulnerable service users. ASCH is liaising with health providers and will support and follow EU-exit plans they have developed.	Following the publication of the Governments no-deal Brexit preparations in the form of 'Operation Yellowhammer' the Commons Select Committee on Exiting the EU raised concerns including the issue of shortages of key products. Government has confirmed that the Department of Health and Social Care is strengthening its Brexit preparations with a £25 million contract to set up an express freight service to deliver medicines and medical products into the country. In addition, it has provided guidance to social care providers to prepare for Brexit in respect of the supply of medicines and other, non-medical, goods and services. This advice is factored into Departmental Brexit Risk plans and is raised with suppliers at regular contract management meetings but no concerns have been raised by suppliers.	Kaj Ghattaora
5	Cost increases	Feedback from suppliers suggests a potential for post Brexit price increases. An increase of up to 12% mentioned as a possibility by food suppliers.	The authority has a duty to take steps to improve the health and wellbeing of the population. In that context the Council needs to monitor the potential of the likelihood and impact on least advantaged groups of possible short term rises in food prices.	low	low	Procurement and Public Health to monitor.	We have developed a spreadsheet to risk assess all our contracts and suppliers on EU exit. The Procurement team have attended several Brexit seminars over the last 2 months. We are ready for the new Find A Tender service that will be launched on 31 December and will ensure all our notices will be posted on FTS going forward. Our procurement portal already has the link into FTS Ongoing discussions with suppliers are underway in contract review meetings, and we are reminding contract managers to continue to have these discussions.	Kaj Ghattaora



	Category	Details of Risk	Potential implications	Impact	Likelihood	Mitigation Actions	Notes	Lead Officer
6	Funding and funding strategy	The 'Divorce Bill' means no treasury windfall is to be expected. Instability and uncertainty of the economy and hence exchequer revenue. The devaluation of sterling has already led to rising inflation and therefore increased operating costs.	Potentially reduced funding available for service delivery. The impact will be considered alongside other issues affecting funding and will form part of the normal MTFS and budgeting processes. In addition to developers not making investment decisions, if there is a further slow down in the economy and housing is not built, the Council may not receive the developer contributions expected and which have been factored into the capital programme. Further impacts relating to State Aid may also affect existing or proposed funding arrangements with third parties which may require review after 1 January when the position on State Aid is clarified.	low	low	Standard planning and budgeting processes will account for any Brexit-related changes to macroeconomic situation and impact of any changes to exchequer receipts.	Spending Review 2020 has been published and the Local government Settlement for 2021/22 one year settlement) is expected w/c 14/1/21. Normal budget processes and approvals will follow.	Keith Palframan
7	Finance risk - access to finance	The Council is unable to access finance to invest in its capital programme.	Impact on investment and service delivery considered low as major source of finance, PWLB, unaffected.	low	low	Monitor market rates and any changes to government's ability to raise finance.	All borrowing takes place via PWLB and no restrictions are anticipated.	Keith Palframan
8	Finance risk - interest rate risk	The Council is unable to afford to invest in its capital programme.	Impact on investment and service delivery considered low as major source of finance, PWLB, unaffected.	low	low	Monitor market rates and any changes to government's ability to raise finance.	All borrowing takes place via PWLB and no restrictions are anticipated. Interest rates on investments are low and expected to remain so. This is allowed for the the MTFS	Keith Palframan
9	Finance risk - impact on government grants.	Government's overall financial plans due to economy decline or stagnation and implications on local government finance.	Reduction in specific Government Grants and Revenue Support Grant reduces faster than currently expected. Further impacts relating to State Aid may also affect existing or proposed funding arrangements with third parties which may require review after 1 January when the position on State Aid is clarified.	medium	medium	Monitor Government announcements, general economy indicators. The public spending review has been delayed and 2020/21 is a one year settlement with no guidance yet on future years. 21/22 is again a one year settlement meaning longer term planning is not possible	Due to COVID 19 the 2021/22 settlement is expected to be very late in December.	Keith Palframan
10	Finance risk - 100% business rates retention	Overall policy change Implementation is delayed.	Change in Government policy affecting speed of BRR	medium	medium	Monitor Government announcements. Nationally, working groups are developing proposals for the Fair Funding Review and the reform of the Business Rates Retention System (BRRS). Both of these have now been delayed.	Change in policy is not now expected in 2022/23 at the earliest and will be linked to a Comprehensive Spending Review due in 2021/22..	Keith Palframan
11	Pension Fund	The result of the EU Referendum and the decision to leave the European Union may result in significant economic instability and slowdown, and as a consequence lower investment returns.	Financial loss, and/or failure to meet return expectations and increased employer contribution costs.	medium	medium	The risk is mitigated by diversification of the Fund's investments across the world, including economies where the impact of "Brexit" is likely to be smaller. The long term nature of the Fund's liabilities provides some mitigation, as the impact of "Brexit" will reduce over time. The Pension Fund via our payroll services currently pay over 400 overseas pensions in foreign currency. Payments are made to Citibank who convert and make the payment in the foreign currency. Payments are subject to foreign exchange rates which do fluctuate. Rates may be severely affected by Brexit which may impact significantly on the payment received by the pensioner. Foreign exchange rates are outside our control.	In the longer term, reduced investment returns may require additional employer contributions. Employer contribution rates for 2020/21 to 2022/23 have been set as part of the 2019 actuarial valuation. The impact of any changes in rates will be factored in to the budget decisions made in December to February.	Keith Palframan

	Category	Details of Risk	Potential implications	Impact	Likelihood	Mitigation Actions	Notes	Lead Officer
12	Potential changes in laws, regulations, government policy or funding arising from the UK leaving the European Union which may impact on Council objectives, financial resilience and affected staff.	Withdrawal of promised funding. Ceasing existing funding. No replacement to future funding. Volume of work which may be required to process new legislation including Health & Safety, employment law including trade union recognition, working time, equality issues, procurement rules etc.	Withdrawal of EU funding with no viable alternative replacement provided to continue investment in the local economy Ceasing of service provision Impact on long-term growth or sustainability of National Non-Domestic Rates receipts.	medium	low	Monitor Government/EU announcements Monitor Official publications Engage with LGA Engage with MHCLG around the plans for a Shared Prosperity Fund (i.e. the reuse of structural fund money) .	Government has published guidance to assist organisations understand replacement UK legislation and processes. This will impact in many areas including State Aid and Information Governance/Data Protection where a review of current approaches may be required after Jan 2020 when the approach is better understood.	Keith Palframan
13	Data Protection	UK legislation replacing EU legislation will introduce changes to UK Data Protection laws.	Changes in process and new learning to comply with changed legislation.	low	low	October 2020: The Government's latest guidance for data protection, after the transition period, was issued on 7 October, with its implications under active review by the council.	Government has published guidance to help organisations continue to comply with data protection law after Brexit if the UK leaves the EU without a deal.	Caroline Agnew
14	European Funding risk - investing in the economy (£214m via D2N2 to 2020)	Withdrawal of promised funding Ceasing existing funding No replacement to future funding. Government funding for large infrastructure projects may reduce.	Withdrawal of EU funding with no viable alternative replacement provided to continue investment in the local economy. Impact on long-term growth or sustainability of NNDR receipts.	medium	low	Monitor Government/EU announcements. Work with the D2N2 LEP around the development of a Local Industrial Strategy which they are required to bring forward and will become an important mechanism for places to 'broker' a favourable deal with Government for the resources they need to enable growth and development over the coming years.		Nicola McCoy-Brown
15	Brexit preparations.	Lack of overall Countywide joint planning to take advantage of opportunities presented by Brexit and to mitigate risks. Local government is critical to delivering a successful Brexit. To support this, on 3 August 2019 Government announced £20 million of funding to support local authorities' Brexit preparations, and a further £9 million of funding was made available for local areas on 21 August 2020. This brings the total funding allocated by the government to help local areas prepare for Brexit to £77 million.	Missed opportunities. Reputational risk for not being prepared.	low	low	A network of 9 local authority chief executives, including Nottinghamshire County Council, from across England has been established to engage with councils in their regions to share information on their Brexit preparations and each council has also been asked to appoint a Brexit Lead Officer to work with central government and local services, businesses and residents in their area to plan intensively for Brexit. The Council's public website includes a 'Brexit support and advice' page.	Some Councils are developing a European strategy for their area maximising benefits, mitigating negatives, working in partnership. Examples include: Dorset County Council – Preparing for Brexit and their European strategy and Cornwall Council – Post Brexit strategy. Cambridgeshire County Council's Brexit Impact Assessment comes to very similar conclusions as Nottinghamshire. The Secretary of State at the MHCLG has "affirmed that EU citizens in the care system had nothing to worry about. Their rights would be protected even after October 31." In addition, the NRPF Network (A network of local authorities and partner organisations focusing on the statutory duties to migrants with care needs who have no recourse to public funds) says "the Government has set out its proposals for the rights of EU nationals who are currently living in the UK in a Statement of Intent, but, for details such as care costs post Brexit the Government and EU have yet to reach a final agreement on the full terms that will apply to the UK when it leaves, and it is unclear how a 'no deal' situation will impact on these proposals.	Derek Higon
16	Brexit 'No-deal' preparations	Government has issued 100+ technical notices setting out what organisations need to do in event of a 'no-deal' Brexit, including: — Health and social care — Schools and education providers — Access to public services — The EU Settlement Scheme — Community engagement — Business support — Regulatory services — Internal operations	Councils are encouraged by Government to consider how the positions outlined in these notices might impact on local areas.	low	low	Those notices most relevant to local authorities have been reviewed and the actions identified in them are covered by mitigating actions already in place.  Government's Brexit: no deal preparations for local authority children's services publications have been reviewed and none of the Council's providers have raised any concerns to date but dialogue continues through contract management meetings.	Government has established a local authority landing page to keep Councils aware of the latest Brexit developments. <a href="https://www.gov.uk/guidance/local-government-brexit-preparedness">https://www.gov.uk/guidance/local-government-brexit-preparedness</a> and a EU Exit Local Government Delivery Board <a href="https://www.gov.uk/government/news/brexit-ministerial-local-government-delivery-board-update">https://www.gov.uk/government/news/brexit-ministerial-local-government-delivery-board-update</a> . These are monitored by the Council's Policy Officer and relevant officers notified of appropriate updates.  October 2020: From a purely children's department point of view it is not thought that there is anything within the recent letter from Michael Gove that presents any new risks that haven't been noted and prepared for (as far as is possible).	Steve Derbyshire

	Category	Details of Risk	Potential implications	Impact	Likelihood	Mitigation Actions	Notes	Lead Officer
17	Devolution/ Local Government Reorganisation.	Government policy change or slows due to distraction of Brexit.	Change in Government policy.	low	low	Monitor Government announcements.	Government is committed to publishing a white paper that discusses devolution and local recovery and is anticipated towards the end of 2020 or early in 2021. Nottinghamshire County Council response is being developed under the Your Nottinghamshire, Your Future case. <a href="https://future.nottinghamshire.gov.uk/">https://future.nottinghamshire.gov.uk/</a>	Nigel Stevenson
18	Businesses - recruitment & retention	Businesses have an inability to recruit and retain staff in key skills shortage and "hard to recruit to" areas. Of specific interest are those in the low wage sectors such as agriculture, tourism and retail.	In order to attract the right workforce businesses may see their employee costs increase paid for by increasing the cost of goods and services and fuelling inflation. Businesses may relocate outside of the area or cease trading having negative impacts on employment and business rates revenue.	low	low	Place planning policies (including Place Plans) that support business expansion. Encourage businesses to focus on long term solutions rather than on the immediate position and to invest more in staff development.	The number of EU residents prior to the Brexit vote grew markedly rising by 91.7 per cent or 1,760,000, to 3,680,00 in the ten years to 2017. Across the UK, EU nationals account for 7.2% of employment. The majority of EU nationals resident in the UK are in full time employment and are more prevalent in some sectors than others, with the result that some industries are more heavily reliant on EU workforce.	Nicola McCoy-Brown
19	Businesses - access to EU markets	To retain full access to EU markets businesses may relocate. Non-UK owned company may leave the UK market place Free movement of finance inhibits investment in UK based company. Mineral companies and other developers delay making investment decisions.	Loss of jobs and consequently more demand for assistance to get people back into employment. Impact on supply chain networks. Loss of business rates.	low	low	Through the D2N2 Growth Hub and the County's dedicated Business Advisors, Nottinghamshire businesses are signposted to the published checklist of what are considered as the absolute minimum businesses should be doing now to make the transition out of the EU as seamless as possible. <a href="https://www.d2n2growthhub.co.uk/international/brexit/">https://www.d2n2growthhub.co.uk/international/brexit/</a>	The East Midlands Chamber has established a Brexit Advisory Group to support East Midlands business in responding to the challenge and opportunities that Brexit will bring. Governments November 2018 assessment of the economic impacts of Brexit indicates a 8% to 10% reduction in GVA in the East Midlands resulting from a no-deal Brexit.	Nicola McCoy-Brown
20	Businesses - opportunities	Benefiting from new trade arrangements negotiated by HM Government around the world, business find new markets for their goods and services.	Higher levels of employment benefiting enhanced social cohesion. Expanded businesses paying more in business rates.	low	low	Monitor trade developments once Brexit negotiations with the EU are finalised.	The D2N2 Growth Hub is providing support for businesses to identify and access new markets: grow with new products, new customers and new horizons.	Nicola McCoy-Brown
21	Business Preparedness	Businesses failing to benefit from new trade arrangements and insufficiently preparing for Brexit and specifically, a No Deal Brexit.	Increase in business closures A failure to secure new markets and alternative trading relationships An under-performing local economy, with a widening gap between the better and worst performing local areas across the County. State aid needs considering, which governs how we offer support to businesses and notably regarding projects like the Growth Hub which is financed in part via EU funding. Export / trade documentation expected to increase ten fold and to add additional costs to UK/EU trade.	high	medium	Through: Information provision and support promoted via the Growth Hub <a href="https://www.d2n2growthhub.co.uk/international-brexit/international-trade-help-and-brexit-guidance/">https://www.d2n2growthhub.co.uk/international-brexit/international-trade-help-and-brexit-guidance/</a> Reviewing business impact and intelligence, maintaining a close relationship with the key business organisations to review how this is / will change and what impact that might have on the nature of required support. An understanding of the wider geographic / local economic impact, responding to need and case-making for additional investment resources. Events continue to take place to help businesses get ready for Brexit. Local businesses across the UK will receive tailored advice and support on preparing for Brexit. In 2019 Trading Standards sent c.700 targeted emails to alert businesses to the actions they need to take to be prepared for EU exit and issued Primary Authority Companies with advice regarding EU exit related changes to UK product safety arrangements. Similar signposting advice can be issued to Primary Authority companies in the coming weeks as the situation becomes clearer.	The case for additional investment through new funding opportunities (replacement EU funding / UK Shared Prosperity Fund, LEP resources, Stronger Towns Funds etc) and support for investment in the likes of skills, infrastructure and business growth programmes can be supported through such intelligence.  A cancellation decision by Government as a result of its review of the HS2 project could have a negative impact on local employment, business orders, investment and confidence. Trading Standards lead officers are keeping abreast of developments in key legislative areas: product safety, food, feed, animal imports etc to be able to respond to enquiries from Nottinghamshire businesses.	Nicola McCoy-Brown
22	A fall in agricultural land prices after Brexit.	Move from Common Agricultural Policy to Domestic Agricultural Policy.	Implications for County Farms and may have an impact on Council owned farms across the County. At the CCN Policy Group in September 2019 a reference was made to a possible reduction in funding for county councils coming from the common agricultural fund, specifically for County Farms.	low	low	Following Government advice in their publications 'Prepare your farming business for a no-deal Brexit'. This advice has been promoted across the County by the National Farmers Union (NFU).	The National Farmers Union (NFU) Brexit team have put together advice and information for Farmers including planning for a no-deal Brexit.	Nigel Stevenson

	Category	Details of Risk	Potential implications	Impact	Likelihood	Mitigation Actions	Notes	Lead Officer
23	Community cohesion risk.	Concern that a 'no deal' Brexit may lead to civil unrest or disillusionment during/after negotiations as neither leave nor remain voters feel their concerns are being met. Increase in hate crime. Consumer behaviour may affect food supplies locally.	Increase in service provision cost. Increase difficulties in providing services.	medium	medium	Through our membership of the Local Resilience Forum (LRF), officers have been engaged in discussions with local and regional partners, the Cabinet Office and MHCLG civil servants on the potential consequences of a No deal Brexit and the methods of coordinating any subsequent necessary responses. The medium impact and likelihood ratings are consistent with the LRF assessment.	As a local authority, we are unable to provide immigration advice. However, residents can search 'find an immigration adviser' on GOV.UK for information on how to find an immigration adviser in their local area. <a href="https://www.gov.uk/find-an-immigration-adviser">HTTPS://www.gov.uk/find-an-immigration-adviser</a> Government has published official guidance for EU citizens <a href="https://www.gov.uk/settled-status-eu-citizens-families">https://www.gov.uk/settled-status-eu-citizens-families</a> .	Rob Fisher
24	Data held within Firmstep	Data stored on Granicus cloud platforms	Implication re: data being stored outside of UK - Granicus store data on Amazon Cloud (Dublin) and have a 2nd back up cloud (Frankfurt)	medium	medium	Discussions underway in ICT to look at storage solution possibility within UK	Investigating the approach taken by other local government organisations.	Nigel Stevenson for ICT Heather Dickinson for IG
	<b>Notes</b>							
	Mitigating actions are already in place.							



6 January 2021

Agenda Item: 7

## **REPORT OF SERVICE DIRECTOR – CUSTOMERS GOVERNANCE AND EMPLOYEES AND SENIOR RESPONSIBLE OFFICER FOR RIPA**

### **REGULATION OF INVESTIGATORY POWERS ACT 2000 – ANNUAL REPORT**

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

To report to the Committee:

- a. Activity by the Council under the Regulation of Investigatory Powers Act (RIPA) for the periods from November 2019 to December 2020.
- b. An update on mandatory training for Officers.

#### **Information**

##### **Background**

2. The Regulation of Investigatory Powers Act 2000 (RIPA) gives the Council the power to undertake covert surveillance in relation to certain investigations. Since 2017 the Investigatory Powers Commissioner's Office (IPCO) has been responsible for the oversight of the use of RIPA.
3. There is a strict authorisation process set out in the legislation; applications are considered by senior officers before final approval is given by the Magistrates Court. The Council is required to submit an annual statistical return to the IPCO on the number of authorisations made and is subject to periodic inspections.
4. The Council is also able to obtain certain communications data (i.e. data about electronic communications) through the National Anti-Fraud Network (NAFN), an expert provider accredited by the IPCO and the Home Office. NAFN submits the annual statistical return to the IPCO on the number of submissions made by the Council.
5. A programme of monitoring and review is set out in the Council's RIPA policy and guidance. Since 2017 annual reports are made to the Governance and Ethics Committee. Throughout the year quarterly reports of Trading Standards activity, which includes use of RIPA, are made to the Communities and Place Committee.
6. This is the third oversight report to Governance and Ethics Committee since November 2017. This report covers November 2019 to December 2020.

## **Annual Activity November 2019 to December 2020**

7. One new authorisation has been made in relation to an on-going investigation in relation to illicit and counterfeit cigarettes and tobacco. This yielded evidence which is currently being assessed for future criminal proceedings and was duly cancelled upon its expiry. NAFN has confirmed that there have also been 7 new applications for communication data access since the last report in November 2019.
8. The Council will submit the annual statistical return to IPCO for the 2020 period by 31 January 2021.
9. Training and awareness raising activity has been undertaken as follows:
  - a. Refresher RIPA training was undertaken by the Council's Senior Responsible Officer (SRO) for RIPA (the Service Director for Customers, Governance and Employees ) in December 2020 and Trading Standards Officers, (30 Officers including managers) during April, November and December 2020.
  - b. Awareness raising for employees and staff has also been undertaken via the Council's Intranet News.

## **IPCO Inspection**

10. The Council is inspected by the IPCO approximately every 3 years with the last inspection being successfully completed on 1st November 2019. This was a desk-top documentary inspection.
11. The IPCO noted that the Council's RIPA policies were undergoing amendment to reflect changes in RIPA statutory guidance; the Council's social media policy would also benefit from amendment to reflect the Council's updated RIPA Policy and guidance; and that the Council's CCTV policy would benefit from consideration of instances where CCTV is used under RIPA.
12. The amendments to the RIPA Policy were minor consequential changes resulting from changes in RIPA guidance (largely changes to reflect the altered name of the Commissioner bodies, a reference to nicotine inhaling products and a reference to this Committee). As there were no substantive changes to the Policy and changes to supporting guidance is also limited, authority was sought for the Service Director for Customers, Governance and Employees to approve the changes and these were approved on 23 January 2020. The Council's social media and CCTV policies were also amended in January 2020 to include consideration of both being used under RIPA.
13. The next IPCO inspection will be in 2023 and it is anticipated that this will consist of a physical inspection.

## **Other Options Considered**

14. None. Activity under the RIPA Policy requires reporting to Committee.

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

15. To ensure the Council is able to exercise its statutory powers in relation to RIPA where it is necessary and proportionate to do so.

## **Statutory and Policy Implications**

16. 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. Where appropriate consultation has been undertaken and advice sought on these issues as required

## **Crime and Disorder Implications**

17. Use of surveillance can assist the Council in relation to the reduction of crime in Nottinghamshire.

## **Human Rights Implications**

18. Every authorisation for surveillance requires consideration of human rights including the right to privacy and the right to a fair trial. The rights of people under surveillance need to be balanced against public safety and the prevention of crime. Every authorisation, therefore, has to clearly set out why the surveillance is considered necessary and proportionate in the circumstances.

## **RECOMMENDATION/S**

- 1) That members consider whether there are any actions they require in relation to the matters contained within the report.

**Marjorie Toward**

**Service Director, Customers Governance and Employees and Senior Responsible Officer for RIPA**

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

Emma Hunter, Legal Services: [emma.hunter@nottscc.gov.uk](mailto:emma.hunter@nottscc.gov.uk)

## **Constitutional Comments (HD – 18/12/2020)**

The matters within the report fall within the remit of the Governance and Ethics Committee.

## **Financial Comments (CSB 18/12/2020)**

There are no direct financial implications arising 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.

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

All

**6 January 2021****Agenda Item: 8****REPORT OF THE SERVICE DIRECTOR, CUSTOMERS, GOVERNANCE AND  
EMPLOYEES****APPOINTMENT OF INDEPENDENT REMUNERATION PANEL MEMBERS****Purpose of the Report**

1. To agree arrangements for the appointment of Members to the Independent Remuneration Panel (IRP) to review the Members Allowances Scheme in accordance with statutory requirements.

**Information and Advice**

2. It is a legal requirement for the County Council to have regard to a report from an IRP before making or revising its Members Allowances Scheme. The Council's current Scheme was agreed by the County Council on 13 July 2017 when the committee system was implemented.
3. The term of appointment for the IRP has now expired and consideration needs to be given to the selection process for a new panel. In light of the ongoing pandemic and lockdown restrictions and the impact this will have on the Council's ability to arrange and resource a full recruitment process, it is proposed that the four Panel members who formed the last IRP in 2017 be reappointed.
4. After initial conversations, all four of the Members involved in the last IRP have confirmed that they would be interested in being reappointed and available in the relevant periods, should this be the Committee's favoured approach:-

**a) Sir Rodney Brooke CBE, DL - Chair**

Sir Rodney has a wide experience of local government as a former Chief Executive and has chaired a number of IRPs for various Councils including previous panels for this Council. He has also chaired a number of other public sector bodies.

**b) Madi Sharma - Member**

Madi has previously served on IRPs for Nottinghamshire, Ashfield and Mansfield. She is an international entrepreneur and ambassador for Nottingham.

**c) Stephen Bray – Member**

Stephen is a former Corporate Director of Gedling Borough Council. He has first-hand experience of the work of an IRP and a detailed understanding of its role and function, from both an officer and Member perspective.

**d) Charles Daybell – Member**

Charles is a former Chief Executive at Braintree District Council. He previously Chaired Nottinghamshire County Council's Standards Committee.

5. The new IRP will need to be convened to carry out a review of the Members Allowances Scheme before the end of June 2021, to enable the recommended scheme to be considered at the Full Council meeting of 22 July 2021. If necessary, the work of the Panel and meetings with County Councillors will be undertaken on a virtual basis.

**Financial Implications**

6. It is proposed to retain the previous fee structure and therefore the total costs will be approximately £6,000, as in 2017. These costs can be met from the relevant Democratic Services budget.

**Other Options Considered**

7. The Nottinghamshire IRP has previously met on a 'task and finish' basis. Some other authorities appoint their IRPs on a standing basis and call on them more regularly. It is proposed to continue with the 'task and finish' approach to keep costs to a minimum.
8. The Committee could decide to undertake a wider recruitment process as the initial starting point (and contact the previous IRP Members to ask them to reapply as part of that process). Whilst recognising the potential benefits of this approach, this would be more resource-intensive and would be more difficult to arrange during the ongoing lockdown restrictions. It would also prevent the existing knowledge base of these Members from being fully utilised.

**Reason/s for Recommendation/s**

9. It is a legal requirement for the Council to appoint an IRP and to review the Members' Allowances Scheme.

**Statutory and Policy Implications**

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

**RECOMMENDATION/S**

That Sir Rodney Brooke CBE DL (Chair), Madi Sharma, Stephen Bray and Charles Daybell be reappointed as the Chair and Members respectively of the IRP for Nottinghamshire County Council for the period 2021-25.

**Marjorie Toward**

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

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

Keith Ford, Team Manager, Democratic Services

Email [keith.ford@nottscc.gov.uk](mailto:keith.ford@nottscc.gov.uk), Tel 0115 9772590

**Constitutional Comments (HD – 23/12/20)**

11. The proposals set out in this report fall within the remit of Governance and Ethics Committee.

**Financial Comments (KRP – 23/12/20)**

12. The financial implications are outlined in paragraph 6

**Background Papers and Published Documents**

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

- The Local Authorities (Members' Allowances) (England) Regulations 2003
- Report to County Council dated 12 January 2017 and minutes of that meeting (published)

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

- All





6 January 2021

Agenda Item: 9

## **REPORT OF THE SERVICE DIRECTOR CUSTOMERS GOVERNANCE AND EMPLOYEES AND MONITORING OFFICER**

### **LOCAL GOVERNMENT ASSOCIATION FINAL MODEL CODE OF CONDUCT FOR COUNCILLORS**

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

1. To update members on progress by the Local Government association (LGA) with their Model Code of Conduct for Councillors. Approval is also sought to establish a member working group to consider the new code in more detail, how the Council wishes to approach incorporating any additional best practice recommendations from the Committee on Standards in Public Life (CoSPL) and whether any other element from the Council's current code of conduct should be retained as local variations.

#### **Information**

2. Members will recall that at the meeting of this Committee in July 2020 a response to the LGA's consultation on the draft Model Code was agreed and thereafter submitted for consideration along with others from around the local government sector.
3. At that time members were disappointed that the Code did not provide significant improvements on the range of sanctions available for a breach of the Code. In addition, members felt that there were some omissions from the Code which if present would strengthen the Code overall and provide a clearer and more robust arrangement for managing expectations and outcomes in respect of member behaviour.
4. At the meeting in November the Committee considered the Council's update to the CoSPL, regarding progress with implementing their best practice recommendations. At that time, it was agreed that the Council should adopt a "wait and see" approach in the hope that some of those issues would be included within the LGA model code. If they were not, then Committee would further consider what action would be appropriate for the Council by way of local additions to the Model Code.
5. The LGA has now published the final Model Code (see **Appendix 1**) and it is therefore appropriate to examine its content in more detail to assess the following issues:
  - a. The extent to which the Model Code should be adopted in whole or in part;

- b. Whether any local additions are required to reflect the CoSPL best practise recommendations;
  - c. Whether any elements of the existing County Council Code of Conduct should be retained as local additions to the Local Code
6. In light of debate at the November Committee, where it was suggested that a member working group be established to consider the issues highlighted above, members are asked to approve that course of action. It would be beneficial for there to be cross party membership of such a working group to ensure buy-in from all groups and from non-aligned members to any proposed course of action. Given the importance of the Code, it is proposed to use the same working group membership from the Constitution Review activities last year, including each of the Group business managers and the non-aligned members. The Chairman has also previously indicated a desire to ensure greater involvement of the Council's 3 Independent Persons in this work and therefore it is proposed that they be invited to meetings of the working group to offer their views for consideration.
7. Members should note that a response from Government to the recommendations of the CoSPL is still awaited and it is only with legislative change that amendments can be made to the range and severity of sanctions available to Councils. Once the Government has issued a response, further reports will be brought to the Committee to examine the implications and the LGA has indicated that at that point, revisions to the Model Code may be required.

### **Other Options Considered**

8. It is a matter for the Council to determine the appropriate content of their Code of Conduct for Councillors and co-opted members. However, the CoSPL and the LGA have designed the Model Code with the expectation that it should act as a foundation for all Codes, although it may be adopted in whole or in part with local additions as the Council determines.

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

9. To ensure that the contents of the revised Model Code are reviewed in detail and further consideration is given to local additions, as appropriate.

### **Statutory and Policy Implications**

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

### **Financial Implications**

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

### **RECOMMENDATION/S**

That Committee:

- 1) Acknowledges the publication by the LGA of its final Model Code of Conduct for Councillors.
- 2) Approves the establishment of a cross party working group as referenced in paragraph 6, to consider the new Code in detail and whether any local additions are required to reflect best practice recommendations of the CoSPL or elements to be retained from the Council's current Code of Conduct.
- 3) Receives a report on the issues set out in the report at a future meeting, in light of the work undertaken by the working group.

**Marjorie Toward**

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

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

Heather Dickinson, Group Manager, Legal, Democratic and Information Governance:  
[heather.dickinson@nottsc.gov.uk](mailto:heather.dickinson@nottsc.gov.uk)

#### **Constitutional Comments (SSR – 18/12/2020)**

12. The recommendations in the report fall within the delegation to Governance and Ethics Committee. Committee is responsible for the implementation of and revision to all codes of conduct and practice of the County Council.

#### **Financial Comments (CSB 18/12/2020)**

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

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

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

- Committee on Standards in Public Life – Call for Evidence: Report to Governance and Ethics Committee 2 May 2018
- Committee on Standards in Public Life – Local Government Ethical Standards Report: Report to Governance and Ethics Committee 1 May 2019
- Local Government association – Consultation on Draft Model Member Code of Conduct: Report to Governance and Ethics Committee 21 July 2020
- Committee on Standards in Public Life – Progress with implementation of Best Practise Recommendations: 25 November 2020

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

- All



## **Local Government Association**

### **Model Councillor Code of Conduct 2020**

#### **Joint statement**

The role of councillor across all tiers of local government is a vital part of our country's system of democracy. It is important that as councillors we can be held accountable and all adopt the behaviors and responsibilities associated with the role. Our conduct as an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to. We also want individuals from a range of backgrounds and circumstances to be putting themselves forward to become councillors.

As councillors, we represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent our local area; taking decisions fairly, openly, and transparently. We have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.

Importantly, we should be able to undertake our role as a councillor without being intimidated, abused, bullied or threatened by anyone, including the general public.

This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.

## Introduction

The Local Government Association (LGA) has developed this Model Councillor Code of Conduct, in association with key partners and after extensive consultation with the sector, as part of its work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance. It is a template for councils to adopt in whole and/or with local amendments.

All councils are required to have a local Councillor Code of Conduct.

The LGA will undertake an annual review of this Code to ensure it continues to be fit-for-purpose, incorporating advances in technology, social media and changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code and the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

## Definitions

For the purposes of this Code of Conduct, a “councillor” means a member or co-opted member of a local authority or a directly elected mayor. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who

- a) is a member of any committee or sub-committee of the authority, or;
- b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

For the purposes of this Code of Conduct, “local authority” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

## Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

## **General principles of councillor conduct**

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the [Seven Principles of Public Life](#), also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

## **Application of the Code of Conduct**

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

## **Standards of councillor conduct**

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

### **General Conduct**

#### **1. Respect**

##### **As a councillor:**

**1.1 I treat other councillors and members of the public with respect.**

**1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.



In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

## **2. Bullying, harassment and discrimination**

### **As a councillor:**

#### **2.1 I do not bully any person.**

#### **2.2 I do not harass any person.**

#### **2.3 I promote equalities and do not discriminate unlawfully against any person.**

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

### **3. Impartiality of officers of the council**

**As a councillor:**

#### **3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.**

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

### **4. Confidentiality and access to information**

**As a councillor:**

#### **4.1 I do not disclose information:**

- a. given to me in confidence by anyone**
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
  - i. I have received the consent of a person authorised to give it;**
  - ii. I am required by law to do so;**
  - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
  - iv. the disclosure is:**
    - 1. reasonable and in the public interest; and**
    - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
    - 3. I have consulted the Monitoring Officer prior to its release.**

#### **4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.**

#### **4.3 I do not prevent anyone from getting information that they are entitled to by law.**

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

## **5. Disrepute**

**As a councillor:**

### **5.1 I do not bring my role or local authority into disrepute.**

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in you or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

## **6. Use of position**

**As a councillor:**

### **6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

## **7. Use of local authority resources and facilities**

**As a councillor:**

### **7.1 I do not misuse council resources.**

### **7.2 I will, when using the resources of the local or authorising their use by others:**

- a. act in accordance with the local authority's requirements; and**
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

## **8. Complying with the Code of Conduct**

### **As a Councillor:**

**8.1 I undertake Code of Conduct training provided by my local authority.**

**8.2 I cooperate with any Code of Conduct investigation and/or determination.**

**8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**

**8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

## **Protecting your reputation and the reputation of the local authority**

## **9. Interests**

### **As a councillor:**

**9.1 I register and disclose my interests.**

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority .

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

## **10. Gifts and hospitality**

**As a councillor:**

- 10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**
- 10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
- 10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

## **Appendices**

### **Appendix A – The Seven Principles of Public Life**

The principles are:

#### **Selflessness**

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

#### **Integrity**

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

#### **Objectivity**

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

#### **Accountability**

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

#### **Openness**

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

#### **Honesty**

Holders of public office should be truthful.

#### **Leadership**

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

## Appendix B Registering

### interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

**"Disclosable pecuniary interest"** means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

**"Partner"** means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

### Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it

### Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it

is a 'sensitive interest', you do not have to disclose the nature of the interest.

## Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

8. Where a matter arises at a meeting which **affects** –

- a. your own financial interest or well-being;
- b. a financial interest or well-being of a friend, relative, close associate; or
- c. a body included in those you need to disclose under Disclosable Pecuniary Interests as set out in **Table 1**

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter **affects** your financial interest or well-being:

- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must make sure that any written statement of that decision records the existence and nature of your interest.



**Table 1: Disclosable Pecuniary Interests**

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

<b>Subject</b>	<b>Description</b>
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain. [Any unpaid directorship.]
<b>Sponsorship</b>	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
<b>Contracts</b>	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the

	<p>councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council —</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
<b>Land and Property</b>	<p>Any beneficial interest in land which is within the area of the council.</p> <p>‘Land’ excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
<b>Licenses</b>	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer</p>
<b>Corporate tenancies</b>	<p>Any tenancy where (to the councillor’s knowledge)—</p> <p>(a) the landlord is the council; and</p> <p>(b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.</p>
<b>Securities</b>	<p>Any beneficial interest in securities* of a body where—</p> <p>(a) that body (to the councillor’s knowledge) has a place of business or land in the area of the council; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were</p>

	spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.
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\* 'director' includes a member of the committee of management of an industrial and provident society.

\* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

## Table 2: Other Registerable Interests

You have a personal interest in any business of your authority where it relates to or is likely to affect:

- a) any body of which you are in general control or management and to which you are nominated or appointed by your authority
- b) any body
  - (i) exercising functions of a public nature
  - (ii) any body directed to charitable purposes or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

## Appendix C – the Committee on Standards in Public Life

The LGA has undertaken this review whilst the Government continues to consider the recommendations made by the Committee on Standards in Public Life in their report on [Local Government Ethical Standards](#). If the Government chooses to implement any of the recommendations, this could require a change to this Code.

The recommendations cover:

- Recommendations for changes to the Localism Act 2011 to clarify in law when the Code of Conduct applies
- The introduction of sanctions
- An appeals process through the Local Government Ombudsman
- Changes to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
- Updates to the Local Government Transparency Code
- Changes to the role and responsibilities of the Independent Person
- That the criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished

The Local Government Ethical Standards report also includes Best Practice recommendations. These are:

**Best practice 1:** Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

**Best practice 2:** Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors.

**Best practice 3:** Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

**Best practice 4:** An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

**Best practice 5:** Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

**Best practice 6:** Councils should publish a clear and straightforward public interest test against which allegations are filtered.

**Best practice 7:** Local authorities should have access to at least two Independent Persons.

**Best practice 8:** An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to

review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

**Best practice 9:** Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

**Best practice 10:** A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

**Best practice 11:** Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council, rather than the clerk in all but exceptional circumstances.

**Best practice 12:** Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

**Best practice 13:** A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

**Best practice 14:** Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.

**Best practice 15:** Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

***The LGA has committed to reviewing the Code on an annual basis to ensure it is still fit for purpose.***



**6 January 2020****Agenda Item: 10****REPORT OF THE SERVICE DIRECTOR, CUSTOMERS, GOVERNANCE AND  
EMPLOYEES****WORK PROGRAMME****Purpose of the Report**

1. To review the Committee's work programme for 2021.

**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 items will be added to the programme as they are identified. The meeting dates and agenda items are subject to review in light of the ongoing COVID-19 period.

**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:**

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

E-mail: [keith.ford@nottsc.gov.uk](mailto:keith.ford@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 24 DECEMBER 2020)**

<b><u>Report Title</u></b>	<b><u>Brief summary of agenda item</u></b>	<b><u>Lead Officer</u></b>	<b><u>Report Author</u></b>
<b>1 February 2021</b>			
Corporate Risk Management Update	To consider the latest update on this issue.	Rob Disney	Simon Lacey
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 (item to be confirmed).	Marie Rowney	Jo Kirkby
<b>31 March 2021</b>			
Use of Councillor's Divisional Fund	To consider the latest six monthly monitoring report and outcomes of sample audit exercise.	Marjorie Toward	Keith Ford
Internal Audit 2020-21 Plan – Term 2 and 2021-22 Plan Term 1	To consider progress in the latest monitoring term and proposed actions in 2021-22 Plan Term 1.	Rob Disney	Simon Lacey
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 (item to be confirmed).	Marie Rowney	Jo Kirkby
Internal Audit Recommendations: Action Tracking	To consider progress against previously agreed internal audit recommendations.	Rob Disney	Simon Lacey
<b>23 June 2021</b>			
Annual Governance Statement 2020-21	To approve the annual statement.	Rob Disney	Simon Lacey
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 (item to be confirmed).	Marie Rowney	Jo Kirkby
Assurance Mapping 2020-21	To consider this annual review of progress.	Rob Disney	Simon Lacey
Annual Fraud Report 2020-21	To consider this annual review of progress.	Rob Disney	Simon Lacey
Head of Internal Audit Annual Report 2020-21	To consider the Head of Internal Audit's latest annual report.	Rob Disney	Simon Lacey

