

Audit and Governance Committee 3 March 2021



Working in partnership with **Eastbourne Homes**

Time: 6.00 pm

PLEASE NOTE: This will be a 'virtual meeting' held remotely in accordance with section 78 of the Coronavirus Act 2020 and section 13 of the related regulations.

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Instructions for members of the Committee and Officers to join the meeting have been circulated separately.

Membership:

Councillor Robin Maxted (Chair); Councillors Amanda Morris (Deputy-Chair) Helen Burton, Sammy Choudhury, Paul Metcalfe, Md. Harun Miah and Barry Taylor.

Quorum: 2

Published: Tuesday, 23 February 2021

Agenda

- 1. Apologies for absence/declaration of substitute members**
- 2. Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests as required by the Code of Conduct.**

- 3. Minutes (Pages 5 - 8)**

To confirm the minutes of the last meeting of the Committee.

- 4. Questions by members of the public.**

On matters not already included on the agenda and for which prior written notice has been given (total time allowed 15 minutes).

- 5. Urgent items of business.**

The Chairman to notify the Committee of any items of urgent business to be added to the agenda.

6. Right to address the meeting/order of business.

The Chairman to report any requests received to address the Committee from a member of the public or from a Councillor in respect of an item listed below and to invite the Committee to consider taking such items at the commencement of the meeting.

7. External Audit 2018/19 - to follow

Report of the External Auditor, Deloitte.

8. External Audit 2019/20

A verbal update from the External Auditor, Deloitte.

9. External Audit draft plan 2020/21 - to follow

Report of the External Auditor, Deloitte.

10. Annual report on the use and governance of covert surveillance powers (Pages 9 - 12)

Report of the RIPA (Regulation of Investigatory Powers Act 2000) Monitoring Officer.

11. Draft Internal Audit Plan 2021/22 (Pages 13 - 22)

Report of the Chief Internal Auditor.

12. Internal Audit and Counter Fraud Quarterly Review (Pages 23 - 38)

Report of the Chief Internal Auditor.

13. Strategic Risk Register Quarterly Review (Pages 39 - 52)

Report of the Chief Internal Auditor.

14. Arrangements for dealing with complaints about councillor conduct report (Pages 53 - 72)

Report of the Monitoring Officer.

15. Date of next meeting

Information for the public

Accessibility: This agenda and accompanying reports are published on the Council's website in PDF format which means you can use the "read out loud" facility of Adobe Acrobat Reader.

Public Participation: Please contact Democratic Services (see end of agenda) for the relevant deadlines for registering to submit a speech on a matter which is listed on the agenda if applicable. Where speeches are normally allowed at a Committee, live public speaking has temporarily been suspended for remote meetings. However, it remains possible to submit speeches which will be read out to the Committee by an Officer.

Information for Councillors

Disclosure of interests: Members should declare their interest in a matter at the beginning of the meeting.

In the case of a disclosable pecuniary interest (DPI), if the interest is not registered (nor the subject of a pending notification) details of the nature of the interest must be reported to the meeting by the member and subsequently notified in writing to the Monitoring Officer within 28 days.

If a member has a DPI or other prejudicial interest he/she must leave the room when the matter is being considered (unless he/she has obtained a dispensation).

Other participation: Please contact Democratic Services for the relevant deadlines for registering to speak on a matter which is listed on the agenda if applicable.

Democratic Services

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Working in partnership with **Eastbourne Homes**

Audit and Governance Committee

Minutes of meeting as a remote meeting on 26 November 2020 at 6.00 pm.

Present:

Councillor Dean Sabri (Chairman).

Councillors Robin Maxted (Deputy-Chair), Sammy Choudhury, Paul Metcalfe, Md. Harun Miah and Barry Taylor.

Officers in attendance:

Ola Owolabi (Deputy Chief Finance Officer (Corporate Finance)), Jackie Humphrey (Chief Internal Auditor) and Elaine Roberts (Committee Officer).

Also in attendance:

Councillor Robert Smart (minutes 21 and 22)
Ben Sheriff (External Auditor - Deloitte).

16 Apologies for absence/declaration of substitute members

Apologies were received from Councillor Helen Burton and Councillor Amanda Morris.

17 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests as required by the Code of Conduct.

There were none.

18 Minutes

The minutes of the last meeting on 9 September 2020 were approved as a correct record.

19 Questions by members of the public.

The Chair confirmed that no questions had been received.

20 Urgent items of business.

There were no items of urgent business

21 Right to address the meeting/order of business.

The Chair confirmed that one request had been received from Councillor Smart, who then addressed the Committee in respect of Item 8 on the agenda,

the External Audit 2018/19, within the allotted time of 5 minutes.

The Chair thanked Councillor Smart for his comments and with the Committee's agreement, the order of Items 7 and 8 were swapped, so that the External Audit became the next Agenda item.

22 External Audit Report 2018/19 and 2019/20

The Deputy Chief Finance Officer, Ola Owolabi, presented a report summarising the key findings of Deloitte.

The Deputy Chief Finance Officer confirmed that, having now resolved and agreed an accounting treatment for ICE (Investment Company Eastbourne), the External Auditor would be issuing an unqualified audit opinion on the Council's financial statement for 2018/2019.

Due to the impact of CV-19, regulations had stipulated a new timeframe for the 2019/20 Audit – extending the sign-off date from July to Nov 2020. The Deputy CFO reported that the 2019/20 accounts had been submitted to the Deloitte as the Council's appointed External Auditor and it was now waiting to be advised of the timing for the 2019/20 audit from Deloitte.

Ben Sheriff from Deloitte then proceeded to present the report on behalf of the External Auditor.

The Chair thanked the External Auditor and Deputy CFO for their presentations and the Committee considered the report.

Deputy CFO clarified the revised accounting treatment of the reserves and confirmed that, in line with a recommendation from the external auditor, a policy would be put in place to explain each of the Council's reserves and how they could be used.

The External Auditor stated that work could not begin on auditing 2019/20 accounts until after January 2020. The reasons given for the delay included: the impacts of CV-19, resolution of issues around ICE, and annual workload peaks.

The Committee raised concerns over the potential delays for 2019/20, of missing the statutory deadline and the potential consequence of delays for the 2020/21 Accounts.

The Deputy CFO confirmed that the 2019/20 accounts had been submitted to Deloitte in July 2020.

The External Auditor confirmed that an initial review of the 2019/20 draft accounts showed improved readiness.

While appreciating the issues cited by the External Auditor, the Committee expressed the view that the improved readiness, the agreement of the

treatment for ICE accounting, and the fact that the draft Accounts (saving the Group Accounts regarding ICE) had been with Deloitte since July 2020, led Members to believe that an expectation for a swift External Accounting was reasonable.

The Chair thanked the External Auditor for his attendance

Resolved (unanimously):

1. To note the ISA-260 Audit Report from Deloitte.
2. To call upon Deloitte to produce the ISA-260 audited statement for 2019/2020 in time for the next Audit and Governance Committee meeting on 3 March 2021.

23 Internal Audit and Counter Fraud Quarterly Report

Chief Internal Auditor, Jacki Humphrey, presented the report and provided an overview of activities of the Internal Audit and Counter Fraud Teams for the last quarter.

The Committee then considered the report.

The Chief Internal Auditor confirmed that any cases of Fraud identified by the Council would be investigated and the Council would always seek redress.

Resolved (unanimously):

To note the report.

24 AOB

The Chair noted that an emailed letter had been received from the LGA in response to a letter sent by the Chair, on behalf of the Committee, raising concerns over the External Audit and the PSAA. All members confirmed that they had received the circulated copy.

25 Date of next meeting

The next meeting was scheduled for Wednesday 3 March 2021 at 6pm, to take place remotely via Teams.

The meeting ended at 7.08 pm

Councillor Dean Sabri (Chairman)

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Report to:	Audit and Governance Committee
Date:	3 March 2021
Title:	Annual report on the use and governance of covert surveillance powers
Report of:	RIPA Monitoring Officer
Ward(s):	All
Purpose of report:	To provide an overview of the Council's recent use of covert surveillance powers
Officer recommendation(s):	That the Committee notes the report
Reasons for recommendations:	The Committee is responsible for overseeing the operation of the Council's policy on the use of covert surveillance
Contact Officer(s):	Name: Lee Ewan Post title: Counter Fraud Investigations Manager and RIPA Monitoring Officer E-mail: lee.ewan@lewes-eastbourne.gov.uk Telephone number: (01323) 415123

1 Introduction

- 1.1 This report summaries the Council's recent use of covert surveillance and online intelligence gathering.
- 1.2 For legal reasons, the report can only provide an overview of surveillance activity. It cannot disclose personal data or details of individual cases that are still the subject of active investigations.

2 Legislative and policy background

- 2.1 Part 2 of the Regulation of Investigatory Powers Act 2000 ('RIPA') provides for the authorisation by certain public bodies, including district councils, of 'directed surveillance'.
- 2.2 'Directed surveillance' is covert surveillance carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about any person, other than by way of an immediate response to events or circumstances.
- 2.3 In conducting directed surveillance, the Council must comply not just with RIPA but with the relevant Home Office code of practice and the Council's own policy – links to which are provided in paragraph 10 below.

- 2.4 In procedural terms, the most important steps under RIPA are for the directed surveillance to be authorised internally by a trained and designated senior manager, and for the authorisation to be approved by a justice of the peace (JP) – either a magistrate or district judge.
- 2.5 At both stages, the authorising officer and JP must be satisfied that the proposed surveillance is necessary for the prevention or detection of a crime attracting, on conviction, a custodial sentence of at least six months; and is proportionate to what is sought to be achieved by carrying it out. This involves balancing the seriousness of the intrusion into the privacy of the subject (or any other person who may be affected) against the need for the activity in investigative and operation terms.

3 Covert Surveillance authorised under RIPA in 2020

- 3.1 There are no cases to report during this period.

4 Online covert activity

- 4.1 The growth of the internet, and the extent of the information that is now available online, presents opportunities for Council officers to view or gather online information which may assist them in preventing or detecting crime or carrying out other statutory functions.
- 4.2 Officers engaged in debt recovery relating to housing rent, council tax, business rate or overpaid housing benefit may need to carry out online research to identify the whereabouts of the debtor; or the existence of that person's employer, for a possible attachment of earnings order.
- 4.3 In addition to its policy on internet and social media research (see link at paragraph 10), the Council has issued its debt recovery officers with guidance on the procedure to follow when their research is likely to obtain private information, if the study of an individual's online presence becomes persistent, or where material obtained from any check is to be extracted and recorded. Whilst debt recovery is a civil matter and therefore outside the RIPA regime, private issues must still be considered and, where necessary, the research must be authorised on the basis of necessity and proportionality. There is a process in place to ensure the Account Management team follows this protocol.

5 Financial appraisal

- 5.1 The cost of conducting and managing covert surveillance and online research is met from existing service budgets.

6 Legal implications

- 6.1 As detailed above, the statutory framework for the authorisation of directed surveillance is part 2 of RIPA, supplemented by the relevant Home Office code of practice. Directed surveillance authorised and conducted in accordance with RIPA provides for lawful interference with a person's right to a private and family life. Failure to comply with statutory requirements may render any directed

surveillance unlawful and therefore inadmissible in evidence. As a further consequence, any persons subjected to unlawful privacy interference could bring a civil claim against the Council.

7 Risk management implications

- 7.1 The Council's arrangements for the management of surveillance, in terms of policies, procedures and designated roles (e.g. RIPA Monitoring officer and RIPA authorising officers) should ensure that activity is fully compliant with RIPA and human rights legislation. Further, the Council will have regard to the recommendations of RIPA inspections conducted by the Investigatory Powers Commissioner's Office, and any internal audits.

8 Equality analysis

- 8.1 There are no equality implications associated with this report.

9 Environmental sustainability implications

- 9.1 There are no environmental sustainability implications with this report.

10 Background papers

The background papers used in compiling this report were as follows:

- Home Office Code of Practice on Covert Surveillance and Property interference (August 2018) – [CHIS Code \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- Lewes District Council policy on covert surveillance - [292573.pdf \(lewes-eastbourne.gov.uk\)](https://www.lewes-eastbourne.gov.uk/292573.pdf)
- Lewes District Council policy on conducting internet and social media research - [https://www.lewes-eastbourne.gov.uk/ resources/assets/inline/full/0/277395.pdf](https://www.lewes-eastbourne.gov.uk/resources/assets/inline/full/0/277395.pdf)

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Report to:	AUDIT AND GOVERNANCE COMMITTEE
Date:	3 rd MARCH 2021
Title:	Draft internal audit plan for 2021/22
Report of:	Chief Internal Auditor
Ward(s):	All
Purpose of report:	To propose an internal audit plan for 2021/22
Officer recommendation(s):	(1) To consider and agree the proposed plan.
Reasons for recommendations:	The remit of the Audit and Governance Committee includes the duties to agree an Annual Audit Plan and keep it under review and to keep under review the probity and effectiveness of internal controls, both financial and operational, including the council's arrangements for identifying and managing risk.
Contact Officer(s):	Name: Jackie Humphrey Post title: Chief Internal Auditor E-mail: jackie.humphrey@lewes-eastbourne.gov.uk Telephone number: 01323 415925 or internally on extension 5925.

1.0 Introduction

- 1.1 The internal audit function contributes to the council's overall governance arrangements through the audits carried out in the annual internal audit plan.
- 1.2 The annual audit plan includes a number of managed audits which are required to be carried out annually.

2.0 Approach to setting the plan.

- 2.1 During the past few years it has been noted that senior managers are more willing to approach Internal Audit to request various audit reviews be carry out in their areas. As these requests usually involve issues which are a high risk, or are of immediate importance, these have been carried out by the team. There have also been times where an audit review of one area has been proposed but, at the time of scoping the review, the relevant senior manager has requested that the scope be changed to cover a different area with which they have concerns.

- 2.2 It is important that Internal Audit add value to the council and ensure that any emerging areas of concern are considered. The work of the team must add value and be flexible whilst still ensuring that there is an adequate breadth of cover to the work that is carried out.
- 2.3 In order to try to address all these points a new approach to the annual audit plan was trialled last year. The total number of areas that can be audited has been divided into the departments under which they sit. The number of areas by department have then been calculated as a percentage of the total number of areas. The table below shows the number of areas listed in the universe for each department which has then been calculated as a percentage of the total.

Department	No of areas	% of total
Regeneration	15	10%
Tourism and Enterprise	18	12%
Service Delivery	58	39%
Corporate Services	59	39%
TOTAL	150	100%

These percentages have then be used to inform the contents of the plan and this is explained in more detail below.

3.0 The Audit Universe

- 3.1 The Audit Universe is the list of all areas across the councils which can be reviewed; this includes areas across both Eastbourne Borough and Lewes District Councils so that a full joint audit plan can be produced. Whilst many services are now delivered jointly there are still some which are relevant to only one council and these are identified as such where appropriate.
- 3.2 As part of the planning process this year a review was undertaken of the Audit Universe that has changed the percentage slightly from last year.

4.0 Production of the draft audit plan for 2021/22.

- 4.1 The internal audit plan for each year begins by calculating the number of audit days available. This takes the number of work days of each member of staff less non-chargeable time (e.g. annual leave, public holidays, sick leave, training, admin. etc.). From the remaining days, 36 are allocated for audits for Eastbourne Homes and 5 for South East Environmental Services Ltd – both of which are paid for by the companies.
- 4.2 There are twelve “managed” audits which have to be undertaken every year as these cover our main financial systems and their controls. The time taken for these days is also taken off the remaining number along with some allocation for special pieces of work, advice, consultancy etc.
- 4.3 The Audit Manager and one Auditor are undertaking apprenticeship scheme training with the Institute of Internal Auditors which has reduced the audit time

available while they undertake the training. Also a new member of staff joined the team in January 2020 and while the majority of training will take place during the last quarter of 20/21 some training will take place in 21/22. Time has to be set aside for this but later in the year the addition of an extra member of staff should help to complete the audit plan.

- 4.4 The total number of days available for audits having been arrived at (see Appendix A) these have then been split by the percentages shown at 2.3. This is as follows:

Total days available		320 audit days
Regeneration	10%	32 audit days
Tourism and Enterprise	12%	28 audit days
Service Delivery	39%	125 audit days
Corporate Services	39%	125 audit days

- 4.5 The universe is the starting point for developing the annual audit plan. Current issues facing the councils are considered and any relevant areas in the universe will be considered for auditing. Equally, any priorities or initiatives for the councils will be considered in the same way.
- 4.6 Once the audits that affect the objectives of the councils have been considered, the rest of the universe is looked at and consideration given to other areas of higher risk, areas that haven't been audited for some time, and new areas added. Any that are considered as being due for review are added to the list based on the percentages at 2.3 and the number of days available.
- 4.7 The majority of services are now shared across the authorities so the audit plan reflects this as well. The draft plan therefore is flexible, covers the work in both authorities and reflects the risk levels around internal controls. This draft plan can be found at Appendix B.
- 4.8 The plan is in place to provide a list of audits that will be carried out if no other work is requested from the team. However, by using the percentage approach when other work is requested, it will be carried out within the time allocated for that department and will mean that one of the lower risk audits will be carried forward to be undertaken within a future audit plan. The aim is to ensure that the breadth of audit work across all areas is maintained whilst still being able to be flexible to requests. Should work be requested that would take the department beyond the percentage allocated then a conversation would be held to decide on the importance of the piece of work being requested.
- 4.9 Quarterly reporting of the work of Internal Audit will be based on this percentage approach.

5.0 Counter Fraud

- 5.1 The plan for Counter Fraud work has also been based on the time available from Counter Fraud staff across the two authorities.

	Days	Priority
Housing Allocations	65	High
Tenancy Fraud	247	High
Right to Buy	180	High
Council Tax/CTR	78	Medium
NNDR	50	Medium
Covid-19 Grants	100	Medium
Private Sector Housing/DFG	5	Medium
Housing Benefit	25	Low
Procurement	5	Low
Data Matching/Other	20	Low

- 5.2 Tenancy fraud work includes building up relationships with Homes First and Account Management in order to elicit more referrals and then to investigate these.
- 5.3 Council Tax and Council Tax Reduction work results in lower amounts of savings than other work. However, these savings are actual cashable savings to the council.
- 5.4 Disabled Facility Grants and Procurement are areas where no fraud work has yet been undertaken so work will be carried out to see how best any investigations can be approached. There has been little work being passed to the Counter Fraud team in respect of Private Sector Housing and Disabled Facility Grants.
- 5.5 Projects to be undertaken within the days listed above include tenancy succession, Council Tax discounts and Housing Applications.
- 5.6 During the year there will be some work carried out by the Counter Fraud Investigations Manager into areas where income can be generated. These will be reviewing the chasing of potential bad debts on rent and deposit loans, and consideration of training a member of staff to be a financial investigator. Having a trained financial investigator would involve some expenditure at first for the training, however they could investigate proceeds of crime from housing fraud etc. and this money can be retained by the council. This would also be a resource that could be offered to other authorities, perhaps for a fixed fee or for a percentage of the monies identified.
- 5.7 Covid-19 grants have been included to reflect the ongoing financial support provided to businesses affected by national and localised restrictions. All grant prevention work and recovery will be returned to central government, however there remains a potential financial income incentive to the council by identifying incorrect liable parties for business rates and those not eligible for Small Business Rate Relief.

6.0 Financial Appraisal

- 6.1 There are no financial implications.

7.0 Legal Implications

- 7.1 This report takes account of regulation 5 of the Audit and Accounts Regulations 2015 which requires the Council to “undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards or guidance.”

8.0 Risk Management Implications

- 8.1 If the council does not have an effective governance framework that is subject to proper oversight by Councillors it will not be able to demonstrate that it has in place adequate means to safeguard council assets and services, and it could be subject to criticism from the council’s external auditor or the public.

9.0 Equality Analysis

- 9.1 An equalities impact assessment is not considered necessary.

10.0 Appendices

- 10.1 Appendix A– Calculation of audit resources for the draft plan.
Appendix B – Draft Audit plan for 2021/2022

11. Background Papers

- 11.1 Audit universe

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	Head of Service	Audit Man	Senior Auditor	Auditor	Auditor
Total days		260	260	260	260
Non charge		172	94	113	77
Actual days	100	88	166	147	183
Gross total	684				
Less EHL	36				
Less SEESL	5				
Total audit days available	643				
Annual audits			183		
Follow ups of audits from previous years			15		
Advice/specials			10		
Fraud/Audit projects			15		
Consultancy and CIA projects			100		
Total			323		
Available for operational audits			320		

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	No of areas		% of universe		Actual days	Rounded days
Regeneration	15		10		32.00	32
Tourism and Enterprise	18		12		38.40	38
Service Delivery	58		39		124.80	125
Corporate Services	59		39		124.80	125

Total days	320	320
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INTERNAL AUDIT DRAFT PLAN 2021/22

Regeneration and Planning

	Regeneration Projects	7	
	Performance Management Software (controls)	5	
	Leasing and Licensing	15	
	Community Wealth Building - LEWES	5	32

Tourism and Enterprise

	Destination Management	10	
	Sovereign Centre - EASTBOURNE	10	
	Stage Door - EASTBOURNE	10	
	Film Liaison Unit	8	38

Service Delivery

	Lewes Waste Services	12	
	Allocations and Housing Lettings System	25	
	Rent Sense (requested by Kevin Rance)	12	
	EHIC/LHICL/HEDP/EHL(gov/perf)	15	
	Shared Ownership/resales	15	
	Leaseholder Management and Recharges	12	
	Pest Control and Public Health Burials	12	
	Pollution (Air quality/beaches)	12	
	Report It App	10	125

Corporate Services

	Land Charges and Searches	10	
	Furloughing	12	
	Finance Performance	20	
	Information Governance	10	
	HR - Covid new ways of working and policies	10	
	Invoice Handling - Flow Matrix	10	
	Risk Management	10	
	IT Security - PSN	10	
	Cyber Security during Covid	12	
	IT Post Brexit Arrangements	12	
	Use Of Social Media	10	126
			321

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Report to:	Audit AND Governance Committee
Date:	3rd March 2021
Title:	Internal Audit and Counter Fraud Report for the first three quarters of the financial year 2020-2021 to the end of December 2020.
Report of:	Chief Internal Auditor
Ward(s):	All
Purpose of report:	To provide a summary of the activities of Internal Audit and Counter Fraud for the first three quarters of the financial year - 1st April 2020 to 31st December 2020.
Officer recommendation(s):	That the information in this report be noted and members identify any further information requirements
Reasons for recommendations:	The remit of the Audit and Governance Committee includes the duties to agree an Annual Audit Plan and keep it under review, and to keep under review the probity and effectiveness of internal controls, both financial and operational, including the Council's arrangements for identifying and managing risk.
Contact Officer(s):	Name: Jackie Humphrey Post title: Chief Internal Auditor E-mail: jackie.humphrey@lewes-eastbourne.gov.uk Telephone number: 01323 415925

- 1 Introduction**
- 1.1 The remit of the Audit and Governance Committee includes the duties to agree an Annual Audit Plan and keep it under review, and to keep under review the probity and effectiveness of internal controls, both financial and operational, including the Council's arrangements for identifying and managing risk.
- 1.2 The quarterly report includes a review of work undertaken by Internal Audit and Counter Fraud. At the end of the financial year the Chief Internal Auditor will state their opinion of the control environment of the authority based on this work.
- 2 Review of the work of Internal Audit carried out in the first three quarters of 2020-21.**

- 2.1 A list of all the audit reports issued in final from 1st April 2020 to 31st December 2020 is as follows:

Name of Audit	Assurance Level
Benefits and Council Tax Reduction (19/20)	Substantial Assurance
Main Accounting (19/20)	Partial Assurance
Treasury Management (19/20)	Substantial Assurance
Payroll (19/20)	Partial Assurance
Council Tax (19/20)	Substantial Assurance
National Non Domestic Rates (19/20)	Substantial Assurance
Cash and Bank (19/20)	Partial Assurance
Debtors (19/20)	Partial Assurance
Housing Rents (19/20)	Partial Assurance
Creditors (19/20)	Partial Assurance
Information Technology (19/20)	Partial Assurance
Voids Management	Substantial Assurance
Rechargeable Repairs	Partial Assurance
Leaseholder Management and Recharges	Partial Assurance
Business Continuity Planning	Minimal Assurance
Procurement	Partial Assurance

NB. These are the Assurance Levels given at the time of the initial report and do not reflect findings at follow up.

- 2.2 Below are the descriptions of the levels of assurance referred to above.

Assurance Level	Description
Full Assurance	Full assurance that the controls reduce the risk to an acceptable level.
Substantial Assurance	Significant assurance that the controls reduce the level of risk, but there are some reservations; most risks are adequately managed, for others there are minor issues that need to be addressed by management.
Partial Assurance	Partial assurance that the controls reduce the level of risk. Only some of the risks are adequately managed; for others there are significant issues that need to be addressed by management.
Minimal Assurance	Little assurance that the controls reduce the level of risk to an acceptable level; the level of risk remains high and immediate action is required by management.
No Assurance	No assurance can be given. The reasons will be explained thoroughly in the report.

- 2.3 During this period the following draft reports have been issued and will be reported in future reports once agreed by the relevant manager.

Implementation of the Cx Housing System
Arrears Collection
Officers Expenses
IR35

- 2.4 Appendix A is the list of all reports issued in final during the year which were given an assurance level below “Substantial”. This list includes brief bullet points of the issues highlighted in the reviews which informed the assurance level given.
- 2.5 Corporate Management Team have recently expressed concern about the Minimal assurance rating that was given to the audit review of Business Continuity Planning. They wish it to be made clear that the council responded and adapted to the Covid restrictions and demands in a very prompt and efficient manner. While the Audit team have not yet reviewed these responses, it is clear that this is indeed the case. However, the audit was undertaken to ensure that the council had Business Continuity Plans in place. It was found that the plans and activities for Business Continuity Plan arrangements for the council were outsourced to East Sussex County Council but that this work was on hold because of the pressure of work around Covid. Some Business Continuity Plans were written purely in response to the pandemic but had not been in place before this and they appear to be specifically related to the Covid response. Therefore, the assurance level given was “minimal” because the process of having Business Continuity Plans in place, and kept up to date, was not in place. This should be seen as a separate issue to the response of the council to the Covid pandemic which appears to have been timely and effective.
- 2.6 During this quarter the team has also continued to give advice to various departments on a variety of subjects. Members of the team are also involved with various projects usually being members of meetings or project boards. Some of these include Document Management, Workplace 2021 and AI – Bots.
- 2.7 The Internal Audit team is currently carrying two vacancies. Corporate Management Team agreed that one of the posts could be filled and a recruitment process has been carried out. Interviews were undertaken in December and the successful applicant will commence work with the council on 18th January.
- 2.8 Two members of the team are undertaking the Internal Audit Practitioner Apprenticeship funded through the government’s Apprenticeship Scheme. The apprenticeship is devised by the Chartered Institute of Internal Auditors (Chartered IIA) which is the recognised professional body for internal auditing in the UK and Ireland. The apprentices are members of the Chartered IIA. As part of the apprenticeship they will complete the:
- IIA Certificate in Internal Audit and Business Risk
 - Certified Internal Auditor (CIA) – Part 1 – Essentials of Internal Auditing
- Completion of the IIA Certificate leads to the IACert designation, and completion of CIA Part 1 leads to the award of the Internal Audit Practitioner designation.
- 2.9 For the audit plan this financial year, the number of audit days available were allocated to departments based on the size of the departments as a percentage

of the organisation. A suggested plan of audits was proposed for the year based on these percentages. The intention was to enable the plan to be flexible. For example, if a piece of work was requested which was not in the plan then it could be carried out within that percentage allocation by dropping one of the planned audits in that area. In this way an adequate breadth of coverage could be ensured which is essential for the “opinion of the Chief Internal Auditor on the control environment” which has to be made at the end of the financial year.

2.10 This flexibility has proved invaluable this year with the effects of the response to the Covid-19 pandemic having a major impact on the work of the council. Most notably with Tourism and Enterprise being seriously impacted and with events cancelled and venues closed, the work on auditing these areas will not be taking place this financial year.

2.11 The table below shows the work carried out by the Internal Audit team in the first three quarters of the year by percentage across the main areas services compared to that planned for the whole.

Area	Planned	Actual
Regeneration	12%	3.32%
Tourism and Enterprise	9%	0.31%
Service Delivery	37%	45.79%
Corporate Services	42%	50.58%

2.12 A small amount of work was carried out under Tourism in preparation for a review that did not then take place. The percentages should be nearer to the planned figures in the next report after other audits have been completed.

2.13 Appendix B shows outstanding recommendations/actions. This list includes recommendations from audit reviews that remain outstanding after the first follow up has been completed, plus actions from other reports that have been brought to committee.

3 Review of the work of Counter Fraud carried out in the first three quarters of 2020-21.

3.1 The Counter Fraud Team have taken a flexible and creative approach in dealing with the existing, and new, fraud investigations under government guidelines and restrictions. Cases have continued to be built and monitored during the lockdown period, with the team responding to new and emerging fraud risks following the release of Covid-19 support packages to businesses and individuals. The team continues to target the high risk and value areas of tenancy housing while also undertaking other exercises as detailed below. However, due to the effect of Covid-19, this has had a direct impact on work which is explained in more detail under each sub section.

3.2 Housing Tenancy – The team continues to work closely with colleagues in Homes First and Legal. There are currently 10 ongoing sublet/abandonment tenancy cases at various stages. Four Housing Applications are also currently being investigated with the possibility of further action to be taken by the Counter Fraud team. Six other tenancy fraud cases were closed with no further action

being required.

- 3.3 Right to Buy – There continues to be an increase in applications in the 3rd quarter, as Covid-19 restrictions were gradually lifted. 19 cases are currently being checked to prevent and detect fraud and protect the authority against money laundering. Six cases were withdrawn during this period with a net saving to the authority of £505,900.
- 3.4 Housing Options – Access for Homes First caseworkers and specialists to use HM Land Registry and the National Anti-Fraud Network facilities for credit checks has been rolled out to help verify applications and prevent fraud. Planned work on Housing Allocations and Applications has been put on hold due to other work commitments.
- 3.5 Small Business Grant Fund – Following on from the government's announcement to support businesses through the Covid-19 pandemic, the team have been working closely with the revenues specialists to prevent and investigate fraudulent applications. The Counter Fraud team are currently undertaking post verification work as requested by the Department for Business, Energy and Industrial Strategy. This work involves reviewing a sample of grant applications in each scheme for evidence of fraud or non-compliance. Over 200 applications have currently been reviewed with the commencement of recovery action for any incorrectly awarded grants. Further schemes have been announced in January 2021 following the latest national lockdown measures and it is expected, therefore, that post verification work will carry on into the new financial year.
- 3.6 NNDR – As part of the review of Small Business Grant Fund applications, discrepancies of Small Business Rate Relief and liable rate payer have been found. This has resulted in changes to two business rate bills with a net income of £6092.69 generated to the authority. Four other cases have been closed with no further action being required.
- 3.7 Council Tax – 14 cases have been investigated during this period with a net recoverable income of £7,217 generated for the authority. A review of Council Tax exemptions/disregards has also commenced.
- 3.8 Council Tax Reduction - Seven cases have been closed in this period generating a recoverable income of £2,850 and a preventative saving of £2864.
- 3.9 Housing Benefit – The team continue to work closely with the Department for Work and Pensions (DWP) and our colleagues in the benefit section. Due to resources restrictions and pressing need to assess Universal Credit applications, the DWP have limited their capacity to investigate Housing Benefit. However, six cases have been closed in this period with an increase in recoverable Housing Benefit of £15,286 and a (WIB) preventative saving of £4,848. A further £498.99 was also recovered from historic Adpen collection.
- 3.10 Housing debtors – The team have commenced a project to look at debt avoidance where loans have been made to assist with securing housing and have remained outstanding following existing methods of contact. So far, this activity has recouped £834.90 in this period which otherwise might have been

written off.

- 3.11 National Fraud Initiative – The Counter Fraud team have provided the mandatory datasets for the 2020/21 exercise. The first set of results are expected to be received in early February 2021.
- 3.12 Data Protection Requests – the team take an active role in supporting colleagues in other organisations to prevent fraud and tackle criminal activity. In this period, we have dealt with 23 DPA requests from the Police and other authorities. In addition, five HMO checks were completed in the 3rd quarter.
- 3.13 A table showing the savings made by the Counter Fraud team in the first three quarters of the year 2020-2021 can be found at Appendix C.

4 Financial appraisal

- 4.1 There are no financial implications relating to expenditure arising from this report. Details of savings generated by the Counter Fraud team are included in Appendix C.

5 Legal implications

- 5.1 This report is for noting only and therefore the Legal Services team has not been consulted on the content of it.

6 Risk management implications

- 6.1 If the Council does not have an effective governance framework that is subject to proper oversight by Councillors it will not be able to demonstrate that it has in place adequate means to safeguard Council assets and services, and it could be subject to criticism from the Council's external auditor or the public.

7 Equality analysis

- 7.1 An equalities impact assessment is not considered necessary because the report is for information only and involves no key decisions.

8 Environmental sustainability implications

- 8.1 Not applicable

9 Appendices

Appendix A – list of all reports issued in final during the year which were given an assurance level below “Substantial” with any issues highlighted in the reviews which informed the assurance level given.

Appendix B – Outstanding recommendations/actions

Appendix C - Counter Fraud work and savings.

10 Background papers

Internal Audit reports issued throughout the year.

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APPENDIX A**Reasons for original assurance levels given (below Substantial)**

N.B. The issues noted here may have been addressed since the original report was issued.

AUDIT REVIEW	ASSURANCE LEVEL	ISSUES NOTED	Level at follow up
Main Accounting (19/20)	Partial	<ul style="list-style-type: none"> Budget holders indicated they would like more training Written procedures have not been updated to reflect shared service Cafi does not reflect the current organisation structure Recharges between councils are not carried out on a regular monthly basis Regular reconciliations between the general ledger and feeder files (e.g. rents, council tax etc.) are not being carried out 	Annual Audits are followed up when the following year's audit is completed.
Payroll (19/20)	Partial	<ul style="list-style-type: none"> The Authorised Signatory List requires updating Processes around honoraria payments needs to be reviewed Some forms do not request detailed information or adequate information was not entered. 	Annual Audits are followed up when the following year's audit is completed
Cash and Bank (19/20)	Partial	<ul style="list-style-type: none"> Written procedures are out of date Cash is held securely but a number of staff are able to access the area where the cash is held. 	Annual Audits are followed up when the following year's audit is completed
Debtors (19/20)	Partial	<ul style="list-style-type: none"> Information/evidence is retained in various areas and some is retained on Outlook. Authorisation for raising invoices is not consistently retained The Authorised Signatory List requires updating Debt recovery procedures require updating. 	Annual Audits are followed up when the following year's audit is completed

APPENDIX A**Reasons for original assurance levels given (below Substantial)**

N.B. The issues noted here may have been addressed since the original report was issued.

AUDIT REVIEW	ASSURANCE LEVEL	ISSUES NOTED	Level at follow up
Housing Rents (19/20)	Partial	<ul style="list-style-type: none"> • Lack of reports from Housing software required to carry out some areas of work • Procedures for entering some types of tenancy require review • Delays in debt recovery action • Access to standing data on the Housing system needs to be reviewed • Arrears recovery procedures need to be aligned and updated 	Annual Audits are followed up when the following year's audit is completed
Creditors (19/20)	Partial	<ul style="list-style-type: none"> • The Authorised Signatory List requires updating • Information/evidence is retained in various areas and some is retained on Outlook. • No documented procedures for verifying bank account changes nor is evidence of checks retained • Purchase orders are not always raised in a timely manner. 	Annual Audits are followed up when the following year's audit is completed
Information Technology (19/20)	Partial	Owing to workload pressures within IT due to Covid-19 it was only possible to carry out a light touch audit. As it was not possible to carry out testing a "partial" assurance level was given. A full review will be carried out for 2020/21.	Full review to be carried out in 20/21
Rechargeable Repairs	Partial	<ul style="list-style-type: none"> • A number of tenancy agreements could not be found during testing • No check is made that invoices sent out are correct • The number of post inspections had fallen due to Covid restrictions. 	Follow up due March 21

APPENDIX A**Reasons for original assurance levels given (below Substantial)**

N.B. The issues noted here may have been addressed since the original report was issued.

AUDIT REVIEW	ASSURANCE LEVEL	ISSUES NOTED	Level at follow up
Leaseholder Management and Recharges	Partial	<ul style="list-style-type: none"> • The Leaseholder handbook is out of date • Copies of some leases could not be found for the audit. 	Follow up due June 21
Business Continuity Planning	Minimal	<ul style="list-style-type: none"> • There is no lead officer for business continuity planning • There is no appropriately skilled or resourced Business Continuity Planning function • The council does not hold a strategic Business Continuity Plan • There is a lack of business continuity plans at a department level 	Follow up due Feb 21
Procurement	Partial	<ul style="list-style-type: none"> • The council does not have a Procurement Strategy • The council does not have a representative on any local procurement group • The use of corporate contracts is not adequately communicated • There is no reporting on savings made through contract procurement • The Creditors system is not being utilised to highlight opportunities to put contracts in place. • Non compliance with raising of purchase orders is not being monitored and reported. 	Follow up due June 21

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APPENDIX B OUTSTANDING RECOMMENDATIONS/ACTIONS

Audit Report

OUTSTANDING RECOMMENDATION	COMMENTS
None	None

Risk Management Report

OUTSTANDING ACTION	COMMENTS
<p>Organise a programme of training, specifically:</p> <ul style="list-style-type: none">• Hold facilitated workshops for CMT and Members to refresh understanding of roles and responsibilities.• Interactive training workshops across all levels.• Risk management refresher training for Members (especially newer ones).• All risk assessments to be put back onto Pentana Performance.• Contract risk management training and awareness, with a view to identifying strategically important contracts and associated risks.	<p>Currently in discussion with Zurich to arrange training. Will begin at senior management level so that training/workshops for CMT and Members can use the risk assessments produced by services.</p>
<p>Operational and service level risks to be recorded on one risk assessment for each service area. Service level risk registers to be reviewed six monthly at CMT with Directors/Asst Directors responsible for the service level risk registers.</p>	<p>This will be completed once risk assessments have been produced.</p>
<p>Service level risk registers to be discussed at Departmental Management Team meetings.</p>	<p>Senior Managers to be reminded of this once the risk assessments have been completed.</p>

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	QUARTER ONE		QUARTER TWO		QUARTER THREE		QUARTER FOUR		YEAR TOTAL	
	Income	Savings	Income	Savings	Income	Savings	Income	Savings	Income	Savings
Tenancy Housing										
Recovery of council properties				£186,000.00					£0.00	£186,000.00
RTB value saved through intervention		£480,920.00		£479,200.00		£505,900.00			£0.00	£1,466,020.00
Housing intervention/fraud						£3,240.00			£0.00	£3,240.00
Revenues										
NNDR			£3,788.58		£6,092.69				£9,881.27	£0.00
Council Tax	£11,866.42		£309.71		£7,217.94				£19,394.07	£0.00
Value of ongoing CT increase per week	£297.93		£3,216.13		£433.81				£3,947.87	£0.00
Council Tax Penalties									£0.00	£0.00
CTR & Housing Benefit										
SPOC Cases									£0.00	£0.00
Council Tax Reduction	£1,462.65		£8,484.03		£2,850.11				£12,796.79	£0.00
CTR weekly incorrect benefit (WIB)		£5,136.64		£3,213.76		£2,864.00			£0.00	£11,214.40
Housing Benefit	£22,938.42		£2,452.74		£15,286.93				£40,678.09	£0.00
HB weekly incorrect benefit (WIB)		£7,462.40		£4,541.12		£4,848.00			£0.00	£16,851.52
Income from Adpen collection	£1,107.85		£984.06		£498.99				£2,590.90	£0.00
NFI										
Number of open matches									£0.00	£0.00
Number of closed matches									£0.00	£0.00
Awaiting Processing									£0.00	£0.00
Overpayments identified									£0.00	£0.00
Weekly incorrect benefit identified									£0.00	£0.00
OTHER INVESTIGATIONS										
Procurement									£0.00	£0.00
Internal									£0.00	£0.00
DPA									£0.00	£0.00
Income from court costs									£0.00	£0.00
TOTALS	£37,673.27	£493,519.04	£19,235.25	£672,954.88	£32,380.47	£516,852.00	£0.00	£0.00	£89,288.99	£1,683,325.92

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Report to:	Audit and Governance Committee
Date:	3rd March 2021
Title:	Strategic Risk Register Quarterly Review
Report of:	Chief Internal Auditor
Ward(s):	All
Purpose of report:	To report to Committee the outcomes of the quarterly review of the register by Corporate Management Team.
Officer recommendation(s):	To receive and note the update to the Strategic Risk Register
Reasons for recommendations:	The Council is committed to proper risk management and to regularly updating the committee with regard to the Strategic Risk Register.
Contact Officer(s):	Name: Jackie Humphrey Post title: Chief Internal Auditor E-mail: Jackie.humphrey@lewes-eastbourne.gov.uk Telephone number: 01323 415925

1 Introduction

- 1.1 The Strategic Risk Register is a high level document that records the key risks facing the council: those risks that would prevent the authority from achieving its overall strategies and objectives.
- 1.2 Maintaining the Strategic Risk Register is a vital part of the governance arrangements of the authority and, as such, it is overseen by the Corporate Management Team who review it on a quarterly basis.
- 1.3 The risk register shows the risk, a description of the risk, the risk score if no action is taken (original risk score), the internal controls put in place to mitigate the risk and the risk score after these controls are in place (current risk score).
- 1.4 The risk register is brought to the committee when any changes have been made to it following review by the Corporate Management Team.

2 January 2021 Review

- 2.1 The Strategic Risk Register was taken to Corporate Management Team on 27th January 2021 for the quarterly review.

- 2.2 The Corporate Management Team also discussed that there was no mention currently in the risk register concerning the financial impact of Covid-19 on the council. The following has therefore been added to SR_002 "Changes to the economic environment makes the council economically less stable":

Description added:

3. Covid 19 has had a serious impact on the Council's finances.

Internal Control added:

Reduces Likelihood

3. The council is currently in ongoing discussions with the Ministry of Housing, Communities and Local Government around financial support to cover costs related to expenditure on responses to the Covid pandemic.

- 2.3 The changes can be seen on the attached Strategic Risk Register.

3. Financial appraisal

- 3.1 There are no financial implications arising from this report.

4. Legal implications

- 4.1 This report is for noting only and therefore the Legal Services team has not been consulted on the content of it.

5. Risk management implications

- 5.1 If the Council does not have an effective risk management framework that is subject to proper oversight by Councillors it will not be able to demonstrate that it has in place adequate means to safeguard Council assets and services, and it could be subject to criticism from the Council's external auditor or the public.

6. Equality analysis

- 6.1 An equalities impact assessment is not considered necessary because the report is for information only and involves no key decisions.

7. Appendices

- Strategic Risk Register

8. Background papers

None

Strategic Risk Register (Eastbourne)

Report Type: Risks Report
Generated on: 28 January 2021

Key to risk scoring

LIKELIHOOD

- 1 - Unlikely
- 2 - Possible
- 3 - Likely
- 4 - Highly Likely
- 5 - Almost Certain

IMPACT

- 1 - Minor
- 2 - Moderate
- 3 - Significant
- 4 - Major
- 5 - Critical

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Code	Title	Description	Likelihood	Impact	Original Risk Score	Internal Controls	Risk Owner	Likelihood	Impact	Current Risk Score	Traffic Light	Next Review Date
SR_001	No political and partnership continuity/consensus with regard to organisational objectives	Sudden changes of political objectives at either national or local level renders the organisation, its current corporate plan and Medium-Term Financial Strategy unfit for purpose.	3	4	12	<u>Reduces Likelihood</u> 1. Create inclusive governance structures which rely on sound evidence for decision making. <u>Reduces Impact</u> 2. Annual review of corporate plan and Medium-Term Financial Strategy	Chief Executive	2	3	6	Amber	01-May-2021

Strategic Risk Register (Eastbourne)

Report Type: Risks Report

Generated on: 28 January 2021

Code	Title	Description	Likelihood	Impact	Original Risk Score	Internal Controls	Risk Owner	Likelihood	Impact	Current Risk Score	Traffic Light	Next Review Date
						3. Creating an organisational architecture that can respond to changes in the environment.						
SR_002	Changes to the economic environment makes the Council economically less sustainable	<p>1. Economic development of the town suffers.</p> <p>2. Council objectives cannot be met.</p> <p>3. Covid-19 has had a serious impact on the council's finances.</p>	5	5	25	<p><u>Reduces Impact</u></p> <p>1. Robust Medium-Term Financial Strategy reviewed annually and monitored quarterly. Refreshed in line with macro-economic environment triennially.</p> <p>2. Creating an organisational architecture that can respond to changes in the environment.</p> <p><u>Reduces Likelihood</u></p> <p>3. The council is currently in ongoing discussions with the Ministry of Housing, Communities and Local Government around financial support to cover</p>	Chief Finance Officer	5	5	25	Red	01-May-2021

Strategic Risk Register (Eastbourne)

Report Type: Risks Report

Generated on: 28 January 2021

Code	Title	Description	Likelihood	Impact	Original Risk Score	Internal Controls	Risk Owner	Likelihood	Impact	Current Risk Score	Traffic Light	Next Review Date
						costs related to expenditure on response to the Covid-19 pandemic.						
SR_003	Unforeseen socio-economic and/or demographic shifts creating significant changes of demands and expectations.	1. Unsustainable demand on services. 2. Service failure. 3. Council structure unsustainable and not fit for purpose. 4. Heightened likelihood of fraud.	5	5	25	<u>Reduces Impact</u> 1. Grounding significant corporate decisions based on up to date, robust, evidence base. (e.g. Census; Corporate Plan Place Surveys; East Sussex in Figures data modelling). 2. Ensuring community and interest group engagement in policy development (e.g. Neighbourhood Management Schemes; Corporate Consultation Programme)	Director of Service Delivery	5	5	25	Red	01-May-2021
SR_004	The employment market provides unsustainable employment base for the	Employment market unable to fulfil recruitment and retention requirements of the Council resulting in a decline in	4	4	16	<u>Reduces Likelihood</u> 1. Changes undertaken to increase non-financial attractiveness of EBC to current and future staff.	Asst Dir of HR and Transformation	3	2	6	Amber	01-May-2021

Strategic Risk Register (Eastbourne)

Report Type: Risks Report

Generated on: 28 January 2021

Code	Title	Description	Likelihood	Impact	Original Risk Score	Internal Controls	Risk Owner	Likelihood	Impact	Current Risk Score	Traffic Light	Next Review Date
	needs of the organisation	performance standards and an increase in service costs.				<p>2. Appropriate reward and recognition policies reviewed on a regular basis.</p> <p><u>Reduces Likelihood and Impact</u></p> <p>3. Review of organisation delivery models to better manage the blend of direct labour provision. Pursuit of mutually beneficial shared service arrangements.</p>						
SR_005	Not being able to sustain a culture that supports organisational objectives and future development.	<p>1. Decline in performance.</p> <p>2. Higher turnover of staff.</p> <p>3. Decline in morale.</p> <p>4. Increase in absenteeism.</p> <p>5. Service failure</p> <p>6. Increased possibility of fraud.</p>	4	4	16	<p><u>Reduces Likelihood</u></p> <p>1. Deliver a fit for purpose organisational culture.</p> <p>2. Continue to develop our performance management capability to ensure early intervention where service and/or cultural issues arise.</p> <p>3. Continue to develop communications through ongoing interactions with staff.</p>	Asst Dir of HR and Transformation	3	4	12	Amber	01-May-2021

Strategic Risk Register (Eastbourne)

Report Type: Risks Report

Generated on: 28 January 2021

Code	Title	Description	Likelihood	Impact	Original Risk Score	Internal Controls	Risk Owner	Likelihood	Impact	Current Risk Score	Traffic Light	Next Review Date
SR_006	Council prevented from delivering services for a prolonged period of time.	1. Denial of access to property 2. Denial of access to technology/information 3. Denial of access to people	4	5	20	<u>Reduces Likelihood</u> 1. Adoption of best practice IT and Asset Management policies and procedures. <u>Reduces Likelihood and Impact</u> 2. Joint Transformation programme has created a more flexible, less locationally dependent service architecture. <u>Reduces Impact</u> 3. Regularly reviewed and tested Business Continuity Plans. 4. Regularly reviewed and tested Disaster Recovery Plan.	Chief Executive	4	4	16	Red	01-May-2021
SR_007	Council materially impacted by the medium to long term effects of an	1. Service profile of the Council changes materially as a result of the impact of the event.	5	5	25	<u>Reduces Likelihood and Impact</u> 1. Working in partnership with other public bodies.	Asst Dir for Corporate Governance	5	5	25	Red	01-May-2021

Strategic Risk Register (Eastbourne)

Report Type: Risks Report

Generated on: 28 January 2021

Code	Title	Description	Likelihood	Impact	Original Risk Score	Internal Controls	Risk Owner	Likelihood	Impact	Current Risk Score	Traffic Light	Next Review Date
	event under the Civil Contingencies Act	<p>2. Cost profile of the Council changes materially as a result of the impact of the event.</p> <p>3. Work adversely affected by reduced staff numbers due to effects of pandemic virus.</p>				<p>2. Robust emergency planning and use of Council's emergency powers.</p> <p><u>Reduces Impact</u></p> <p>3. Ongoing and robust risk profiling of local area (demographic and geographic).</p> <p>4. Review budget and reserves in light of risk profile.</p>						
SR_008	Failure to meet regulatory or legal requirements	<p>1. Trust and confidence in the Council is negatively impacted.</p> <p>2. Deterioration of financial position as a result of regulatory intervention/penalties.</p> <p>3. Deterioration of service performance</p>	3	4	12	<p><u>Reduces Likelihood</u></p> <p>1. Developing, maintaining and monitoring robust governance framework for the Council.</p> <p>2. Building relationships with regulatory bodies.</p> <p>3. Develop our Performance Management capability to ensure early intervention where service</p>	Asst Dir Legal and Democratic Services	2	4	8	Amber	01-May-2021

Strategic Risk Register (Eastbourne)

Report Type: Risks Report

Generated on: 28 January 2021

Code	Title	Description	Likelihood	Impact	Original Risk Score	Internal Controls	Risk Owner	Likelihood	Impact	Current Risk Score	Traffic Light	Next Review Date
		as a result of regulatory intervention/penalties				<p>and/or cultural issues arise.</p> <p>4. Take forward the recommendations of the CIPFA Asset Management report to ensure we meet regulatory/legal requirements regarding the management of property.</p> <p>5. Ensure there is full understanding the impact of new legislation.</p> <p>6. All managers are required to abide by the Council's procurement rules.</p> <p>7. Ensure that fire risk regulations are adhered to and that Fire Risk Assessments are regularly reviewed.</p>						
SR_009	Commercial enterprises	1. Unfamiliar activity with staff	3	4	12	<u>Reduces Likelihood</u>	Dir of Regenerati	5	5	25	Red	01-May-2021

Strategic Risk Register (Eastbourne)

Report Type: Risks Report

Generated on: 28 January 2021

Code	Title	Description	Likelihood	Impact	Original Risk Score	Internal Controls	Risk Owner	Likelihood	Impact	Current Risk Score	Traffic Light	Next Review Date
	that are fully controlled by the authority do not deliver financial expectations or do not meet governance requirements.	inexperienced in this area 2. Council finances affected if projects do not meet financial expectations. 3. Reputational damage if governance procedures are inadequate. 4. Failure to abide by company law.				1. Hire suitably qualified/experienced staff to give legal and specialist support. 2. Appoint Head of Commercial Activities. 3. Ensure that projects meet core principles. 4. Up or re-skill staff to maximise commercial opportunities. 5. Ensure governance processes are set up and adhered to.	on and Planning And Dir of Tourism and Enterprise					
SR_010	The Council suffers a personal data breach by inadequate handling of data or by an IT incident	1. Trust and confidence in the Council is negatively impacted. 2. Deterioration of financial position as a result of regulatory	3	4	12	<u>Reduces Likelihood</u> 1. Ongoing corporate training for data protection. 2. Ensure all staff complete the e-learning Data Protection course.	Asst Dir Legal and Democratic Services	2	4	8	Amber	01-May-2021

Strategic Risk Register (Eastbourne)

Report Type: Risks Report

Generated on: 28 January 2021

Code	Title	Description	Likelihood	Impact	Original Risk Score	Internal Controls	Risk Owner	Likelihood	Impact	Current Risk Score	Traffic Light	Next Review Date
		intervention/penalties 3. Deterioration of service performance as a result of regulatory intervention/penalties 4. Increased probability of compensation claims by persons affected by a personal data breach.				3. Ensure that the Data Protection Policy is regularly reviewed. 4. Ensure the Data Protection Officer is afforded the resources to discharge their statutory functions. 5. Ensure that managers regularly remind staff of their responsibilities under data protection, including personal data breach reporting arrangements. 6. Ensure the suite of IT policies is kept up to date. 7. Ensure that IT security is in place and regularly tested. <u>Reduces Impact</u> 8. Incident management procedures to mitigate loss						

Strategic Risk Register (Eastbourne)

Report Type: Risks Report

Generated on: 28 January 2021

Code	Title	Description	Likelihood	Impact	Original Risk Score	Internal Controls	Risk Owner	Likelihood	Impact	Current Risk Score	Traffic Light	Next Review Date
						or breach of data are in place.						
SR_011	Judicial challenge of decision-making is heightened as a consequence of increased reliance on use of officer delegated powers	<p>1. There is scope for the public audience, members of whom may be directly or indirectly affected by council decisions, to increase once they can routinely hear (and see) meetings from the comfort of their homes. So, the number of people who may be in a position to mount a challenge may similarly increase.</p> <p>2. There is potential for successful challenges where lapses in IT connectivity may mean that decisions are made where</p>	4	4	16	<p><u>Reduces Likelihood</u></p> <p>1. Work closely with IT to ensure that technological issues are kept to a minimum.</p> <p><u>Reduces Impact</u></p> <p>2. Use of delegated powers to be adequately recorded</p> <p>3. Issue minutes of meetings as soon as possible.</p>	Asst Dir Legal and Democratic Services	4	4	16	Red	01-May-2021

Strategic Risk Register (Eastbourne)

Report Type: Risks Report

Generated on: 28 January 2021

Code	Title	Description	Likelihood	Impact	Original Risk Score	Internal Controls	Risk Owner	Likelihood	Impact	Current Risk Score	Traffic Light	Next Review Date
		<p>members have not heard, and taken into account, all relevant information and/or where key public or other participants have not been able to participate in the meeting due to technological failure.</p> <p>3. The officer resource needed to defend the councils against this type of challenge will be significant.</p>										

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Report to:	Audit and Governance Committee
Date:	3 March 2021
Title:	Arrangements for Dealing with Complaints about Councillor Conduct
Report of:	Monitoring Officer
Ward(s):	All
Purpose of report:	To seek approval of written procedures for dealing with complaints about councillor conduct
Officer recommendations:	That the Committee– (1) approve the procedure for dealing with complaints about councillor conduct, as set out in Appendix 1; (2) approve the investigation procedure and hearings procedure set out at Appendices 2 and 3 respectively; and (3) grant delegated authority to the Monitoring Officer to make any administrative or technical amendments to the above procedures, necessary to ensure ongoing compliance with the law and best practice.
Reasons for recommendations:	The Council must by law put in place arrangements under which allegations of councillor misconduct can be investigated and determined.
Contact Officer(s):	Name: Oliver Dixon Post title: Monitoring Officer E-mail: oliver.dixon@lewes-eastbourne.gov.uk Telephone number: (01323) 415881

1 Introduction

- 1.1 Section 28 of the Localism Act 2011 requires the Council to have in place arrangements under which allegations that a Member has failed to comply with the authority's Code of Conduct can be (a) investigated and (b) determined.
- 1.2 Historically, the Council has relied on informal and unwritten procedures for dealing with allegations of councillor misconduct. This may lead to inconsistency and unfairness, and the Council should therefore adopt a written set of procedures and publish them on its website, for all to access and refer to when needed.

2 Proposed procedures

- 2.1 The “arrangements” required by the Localism Act do not prescribe the actual procedures for dealing with complaints about councillor conduct. These are a matter for individual local authorities, and in practice the content has evolved over time in line with case law (decisions of the courts) and best practice.
- 2.2 To rectify the Council’s lack of written procedures, it is recommended that the Committee approve the following documents:
- (i) Arrangements for dealing with complaints about councillor conduct, set out in Appendix 1;
 - (ii) Investigation Procedure, set out in Appendix 2; and
 - (iii) Hearings Procedure, set out in Appendix 3
- 2.3 In broad terms, the arrangements for dealing with councillor conduct (Appendix 1) consist of:
- (i) a preliminary assessment, in consultation with the Independent Person, to decide if the complaint can and should be formally investigated;
 - (ii) arrangements for the formal investigation (if warranted), described in more detail in the Investigation Procedure (Appendix 2); and
 - (iii) options for resolving the complaint once an investigation is complete, which may include a Standards Panel hearing – described in more detail in the Hearings Procedure (Appendix 3).
- 2.4 The procedures at appendices 1-3 are based on those used by Lewes District Council for the past eight years and are also broadly consistent with those used by other neighbouring authorities.
- 2.5 However, we have taken this opportunity to update the arrangements for dealing with complaints about councillor conduct (Appendix 1) to implement a best practice recommendation by the Committee on Standards in Public Life. This relates to the section headed ‘Will your complaint be formally investigated?’ which now, taking on board the recommendation, sets out the public interest factors the Monitoring Officer will consider in deciding whether a complaint should be formally investigated.

3 No change to Code of Conduct

- 3.1 The Committee should note that **no changes** to the Code of Conduct for Members are proposed at this time. This report is solely about the arrangements for dealing with allegations that a Member has failed to comply with the Code.

4 Financial appraisal

- 4.1 Approving the three procedures referenced in this report has no cost implications, as the documents are already drafted and simply require uploading to the Council’s website. The cost of implementing the procedures is already provided for in the Legal Services staff budget.

5 Legal implications

- 5.1 Approving the recommendations in this report will provide added assurance that the Council is complying with its legal obligations under section 28(6) of the Localism Act 2011.
- 5.2 Under the Council's constitution, the Audit and Governance Committee has a specific remit to put in place arrangements to investigate and make decisions in relation to complaints about councillor conduct. The Committee therefore has authority to agree the recommendations without referring them to full Council.

6 Risk management implications

- 6.1 If the Council does not have a written set of procedures for dealing with complaints about councillor conduct, it will not be able to demonstrate fairness and consistency in the way these complaints are processed and resolved. To maintain confidence in local democracy, the public need to know there is a robust system for holding councillors to account when it appears they have failed to comply with the Code of Conduct.

7 Appendices

Appendix 1 – Arrangements for dealing with complaints about councillor conduct

Appendix 2 – Investigation Procedure

Appendix 3 – Hearings Procedure

8 Background papers

The background papers used in compiling this report were as follows:

- Local Government Ethical Standards – a review by the Committee on Standards in Public Life:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF

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Arrangements for dealing with complaints about councillor conduct

These arrangements set out how you may make a complaint that an elected or co-opted member of this authority has failed to comply with the authority's Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority's Code of Conduct.

The Council must have in place arrangements under which allegations that a member or co-opted member of the authority has failed to comply with that authority's Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member against whom an allegation has been made.

The Code of Conduct

The Council has adopted a Code of Conduct for members, which you can find on the Council's website under '[Constitutions](#)'.

Making a complaint

If you wish to make a complaint, please write to –

The Monitoring Officer
Lewes and Eastbourne Councils
Town Hall
Grove Road
Eastbourne
BN21 4UG

Or email committees@lewes-eastbourne.gov.uk

The Monitoring Officer (MO) is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form which you can find [here](#).

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this and your reasons in the space provided on the complaint form, and the MO will consider your request. The complaint form describes in more detail the circumstances in which it may be appropriate to withhold your identity from other parties. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

For any or all aspects of the complaint handling process, the MO may delegate his/her functions to the Deputy Monitoring Officer or to another suitably qualified officer of the authority.

Initial Assessment

The MO will review every complaint received and, after consultation with the Independent Person¹, take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint.

Will your complaint be formally investigated?

The MO will assess whether your complaint **can** and **should** be formally investigated.

1. **Can** we investigate your complaint?
 - Is the person you are complaining about a councillor?
 - Does the complaint relate to their conduct when acting in their official capacity as a councillor?
 - Does the complaint relate to something covered by the Council's Code of Conduct for Members?
2. **Should** we investigate your complaint?
 - Is it trivial, minor, vexatious, malicious or politically motivated?
 - Is there sufficient evidence to support the complaint?
 - Did the alleged conduct occur in the recent past?
 - Is it amenable to informal resolution?
 - Would an investigation be proportionate and in the public interest?

Public interest factors would include:

- (i) the seriousness of the alleged conduct

¹ The Independent Person is a statutory appointment under section 28 of the Localism Act 2011, whose role includes advising the MO and the authority on matters concerning the conduct of members.

- (ii) whether the alleged conduct appears premeditated
- (iii) the extent to which the councillor appears to have benefited from the conduct and/or the degree of harm done to the complainant
- (iv) the effect of any physical or mental condition experienced by the councillor at the time
- (v) whether the person complained about is no longer a councillor
- (vi) whether the conduct could undermine public confidence in local government and democracy
- (vii) whether the time, effort and cost of a formal investigation would be in proportion to any of the factors listed at (i) to (vii) above.

The factors at paragraphs 1 and 2 above are not intended to be exhaustive and the MO may decide that a complaint does not merit formal investigation for any other reason which appears to him/her to be relevant. The MO has discretion to refer the decision as to whether a complaint merits an investigation to the Standards Panel if it appears appropriate to do so.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed. In appropriate cases, the MO may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority make a reasonable offer of informal resolution, but you are not willing to accept that offer, the MO will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the MO has the power to call in the Police and other regulatory agencies.

Formal Investigation

If the MO decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer will normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the

member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the MO.

A more detailed description of the investigation procedure can be found [here](#).

What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The MO will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the MO will write to you and to the member concerned, notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the MO is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The MO will review the Investigating Officer's report and will then either send the matter for a Standards Panel hearing or, after consulting the Independent Person, seek informal resolution.

Informal Resolution

The MO may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the MO will report the matter to the Audit and Governance Committee for information, but will take no further action. However, if you tell the MO that any suggested resolution would not be adequate, the MO may refer the matter for a Standards Panel hearing.

Standards Panel Hearing

If the MO considers that informal resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the MO may report the Investigating Officer's report to the Standards Panel (a sub-committee of the Council's Audit and Governance Committee) which will conduct a hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a [procedure for Standards Panel hearings](#), which in summary provides the following:

The MO will conduct a “pre-hearing process”, requiring the member to give his/her response to the Investigating Officer’s report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Standards Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Panel. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Panel must take into account the views of the Independent Person before it makes a decision on the alleged breach of the Code.

The Panel may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Panel will then consider what action, if any, it should take as a result of the member’s failure to comply with the Code of Conduct. In doing this, the Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

What action can the Standards Panel take where a member has failed to comply with the Code of Conduct?

The Standards Panel may take one or more of the following measures in respect of a member found to have failed to comply with the Code of Conduct:

1. Publish its findings in respect of the member’s conduct
2. Write a formal letter to the member found to have breached the code
3. Report its findings to Council for information
4. Seek formal censure through a motion at Council
5. Recommend to the member’s Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council
6. Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities

7. Instruct the MO to arrange training, mediation or other appropriate course of action, for the member.

The Standards Panel has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Standards Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Standards Panel resolves to take.

As soon as reasonably practicable thereafter, the MO shall prepare a formal decision notice in consultation with the Chair of the Panel, and send a copy to you and to the member, and make the decision notice available for public inspection.

Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Standards Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

Appeals

There is no internal right of appeal for you as complainant or for the member against a decision of the MO or of the Standards Panel

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government and Social Care Ombudsman.



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Investigations Procedure

Introduction

This document sets out the procedure which will be followed once a decision has been taken that an allegation of misconduct by a member should be investigated.

It should be read in conjunction with the document “Arrangements for dealing with complaints about councillor conduct”.

The appointment of the Investigating Officer

Upon deciding to refer an allegation for investigation, the Monitoring Officer will appoint an Investigating Officer and instruct him/her to conduct an investigation of the allegation and report on it. The Monitoring Officer may appoint a replacement if the Investigating Officer is unable to complete the investigation. The Investigating Officer may be an Officer of the authority or another authority or an external investigating officer. They should not be connected with the Standards Committee.

The role of the Investigating Officer

The role of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented in their report.

Subject to the agreement of the Monitoring Officer, the Investigating Officer may appoint a person(s) to assist him/her in the conduct of his/her functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

Notification requirements

Once they have appointed an Investigating Officer, the Monitoring Officer will notify the Subject Member (i.e. the member against whom the allegation has been made) that the matter is being referred for investigation and inform them who is conducting the investigation.

The Monitoring Officer will notify the complainant that an investigation will take place and that they may be contacted in relation to that investigation.

Conduct of the investigation

The Investigating Officer shall have a broad discretion as to how they conduct the investigation.

They may require the Subject Member and the complainant to provide them with information and /or documents which are relevant to the investigation. They may require them to provide details of other people who may be able to assist with the investigation.

The Investigating Officer may consult the Monitoring Officer at any stage of the investigation.

The Investigating Officer may request any person to attend an interview with them and/ or provide them with documents and / or information.

Any person who is interviewed may arrange to have a friend or other person with them (provided they are not connected to any matter under investigation).

The Investigating Officer will take a note of any interviews that they conduct.

The Monitoring Officer may agree that the authority will pay such expenses, fees or allowances to any persons providing documents, information, advice or explanation, as they consider appropriate.

Referral to the Monitoring Officer

The Investigating Officer may refer the matter back to the Monitoring Officer if it appears to them appropriate to do so. For example, if the Member is seriously ill or the decision to investigate should be reconsidered in the light of new evidence.

Deferral of investigation

The Monitoring Officer has discretion to defer the investigation if it appears appropriate to do so. For example, if there is a criminal investigation taking place.

Confidentiality

The Investigating Officer shall request that anyone contacted in relation to the investigation maintain confidentiality in order to maintain the integrity of the process.

Draft Report

When the Investigating Officer is satisfied that he/she has sufficient information, or has obtained as much information as is reasonably practicable to obtain, he/she shall prepare a confidential draft report setting out the details of the allegation, the relevant sections of the code, a summary of the allegation, the response of the Subject Member, the information, documents and evidence taken during the course of the investigation, a statement of his/her draft findings, and the Investigating Officer's conclusion as to whether the member has breached the code.

The draft report should be sent to the Monitoring Officer, the complainant and the Subject Member for their comments. The Investigating Officer may wish to conduct further investigations once he/she has received those comments, before producing their final report.

Final Report

The final report should include the same sections as the draft report and a final conclusion as to whether there has been a breach of the code.

It may be helpful to include a chronology, summary of disputed facts and /or to append witness statements or other documents.

Action on receipt of Report

If the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct, the Monitoring Officer will review the report and, if satisfied that the report is sufficient will write to the complainant and the Subject Member notifying them that no further action is required and enclosing a copy of the report.

If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he /she may ask the Investigating Officer to reconsider his / her report.

If the report concludes that there is evidence of a failure to comply with the Code of Conduct they will either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.

The Hearings process is the subject of a separate procedure.

More information on the local resolution of complaints can be found in the arrangements document.

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Hearings Procedure

The following process will be followed when a decision has been taken that a hearing, as to whether a member has breached the code of conduct, is required.

Pre-hearing process

The Monitoring Officer will, where possible, arrange for the Standards Panel to meet to hear the complaint within 3 months of receiving the Investigating Officer's report. They should aim to find a date which the witnesses, the Investigating Officer, the complainant and the Subject Member (the member against whom the complaint has been made) can attend. They should give all those involved, particularly the Subject Member, sufficient notice of the hearing. The Monitoring Officer should aim to arrange a hearing which can take place in one day or consecutive days without the need to have gaps between sittings or lengthy days.

The Standards Panel is subject to the normal requirements on confidential and exempt information as any other committee or sub-committee under ss100 A to K and Schedule 12A of the Local Government Act 1972. The Monitoring Officer will consider whether these provisions apply in advance of the hearing.

The Monitoring Officer will require the Subject Member to give his/her response to the Investigating Officer's report in order to identify what is likely to be agreed and what is likely to be in contention at the hearing.

If the Subject Member wishes to rely on evidence at the hearing, they should provide it to the Monitoring Officer as soon as possible. The Investigating Officer may have taken a witness statement from them or set out their comments in their report but if the Subject Member wishes to add to what the Investigating Officer has written they should provide a witness statement to the Monitoring Officer as soon as possible.

The Panel will not allow new arguments or evidence to be presented at the hearing.

The Monitoring Officer will decide what evidence will need to be heard, and what written evidence can be read at the hearing. The Monitoring Officer should take

account of the views of the witnesses and the Subject Member in reaching such decisions.

The Monitoring Officer can consult the Chair of the Hearing Panel if he/she feels their guidance would assist and ask the Chair to issue directions in relation to the pre-hearing process.

The Monitoring Officer may wish to offer to cover the expenses of witnesses associated with their attendance at the hearing.

The Monitoring Officer will consider whether it is appropriate to hear two complaints together, for example if they relate to the same member, or relate to the same incident or occasion.

The Subject Member should be provided with the Investigating Officer's report and any evidence which will be heard at the hearing.

The Monitoring Officer should provide the members of the Hearing Panel with all the evidence in advance of the hearing so that they can read it to identify any potential conflicts of interest.

The Monitoring Officer will provide the Hearing Panel with a report which summarises the allegation. This should include a list of agreed facts and disputed issues and outline the proposed procedure for the hearing.

The Monitoring Officer will act as a point of contact for the Subject Member, the complainant, the Independent Person and any witnesses who will give evidence.

The Hearing

The hearing will generally take place in public.

An Independent Person will be invited to attend the hearing and may be asked to comment if the Panel thinks it is appropriate. This will be an Independent Person who has not previously been consulted by the Subject Member.

If the Subject Member does not attend the hearing, the Panel may adjourn the hearing or may continue to reach a decision on the basis of the Investigating Officer's report and any evidence they hear, if they decide to hear evidence.

Whilst the hearing is a meeting of the authority, it is not a court of law. It does not hear evidence under oath. The rules of natural justice should nevertheless be followed and the Hearing Panel will have due regard to the seriousness of the proceedings for those involved, the Council and the public.

The Panel will decide disputed issues and whether the Subject Member has breached the code on the balance of probabilities.

Representation

The Subject Member may choose to be represented by any person they wish. They will have to bear any cost of being represented. The Panel may refuse to allow a representative to remain at the hearing if they are disruptive. The Panel will have the discretion to hear opening or closing arguments from the Subject Member and the Investigating Officer if they feel it would assist them in reaching a decision.

Evidence

The Panel will control the procedure and evidence presented at a hearing, including the number of witnesses and the way they are questioned. All matters relating to the evidence and procedure are within their discretion.

Generally the Subject Member is entitled to present their case as they see fit.

The Panel will usually have regard to submissions from the Subject Member if they are considering whether to hear particular evidence.

Witnesses of facts that are disputed would normally be expected to attend to be questioned. Character witnesses will normally provide written evidence which can be read at the hearing.

Witnesses should be treated with courtesy throughout the pre-hearing stage and at the hearing.

Witnesses may be questioned by the Panel, the Monitoring Officer and the Subject Member. This discretion should generally be unfettered by the Panel unless there is good reason to do so.

The onus is on the Subject Member to ensure the attendance of witnesses who they would like to give evidence to assist them. The Panel can limit the number of witnesses or the issues which can be covered by them.

Neither the Panel nor the Subject Member will have any power to compel witnesses to give evidence.

At the Hearing

At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the

Code of Conduct. The Investigating Officer is likely to ask the complainant to attend and give evidence to the Panel. The Investigating Officer may be asked about their report or any matters relating to their involvement.

Role of Monitoring Officer

References to the Monitoring Officer should be read to include any representative of the Monitoring Officer.

The Monitoring Officer has a key role in ensuring the smooth running of the pre-hearing and hearing process. They will remain neutral throughout and will provide independent advice to the Panel

Role of the complainant

The role of the complainant will usually be limited to being a witness and they are not a party to the proceedings. However, the Panel may wish to consult them at any stage in the hearing if they feel their comments would assist them.

Decision

The Panel must consult the Independent Person in reaching their decision.

The Panel may wish to retire to consider their decision. The Monitoring Officer may assist them in constructing the reasons for their decision. The Monitoring Officer will not express any view on the evidence heard or the decision to be reached.

The Panel will reach a decision as to whether the subject member has breached the code of conduct. If they decide that the Subject Member has not breached the code of conduct they will take no further action. If they decide that the Subject Member has breached the code of conduct they should go on to decide what sanction, if any, is appropriate.

Sanctions

The Panel must consult the Independent Person before imposing any sanction and give the Subject Member the opportunity to make representations.

The Panel should consider all the mitigating and aggravating circumstances that appear to them to be relevant. For example, they may wish to consider:

- What were the actual and potential consequences of the breach?
- How serious was the breach?
- What is the attitude of the Subject Member now? Have they apologised?

- Has the Subject Member previously been dealt with for a breach of the code?

The following are example of mitigating and aggravating factors but these lists should not be regarded as exhaustive.

Mitigating Factors

- An honest but mistaken belief that the action was not a breach of the code
- A previous record of good service
- Evidence that they were suffering from ill health at the time of the breach

Aggravating Factors

- Dishonesty
- Continuing to deny the facts or blaming other people
- Evidence of a failure to follow advice or warnings

The priority of the Panel should be to ensure that there are no further breaches of the code and that public confidence is maintained.

Sanctions

The sanctions available to the Panel are:

- Publish its findings in respect of the member's conduct
- Write a formal letter to the councillor found to have breached the code
- Report its findings to Council for information
- Seek formal censure through a motion at Council
- Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council
- Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities
- Instruct the Monitoring Officer to arrange training, mediation or other appropriate remedy, for the Member
- Remove the member from some/all outside appointments to which he/she has been appointed or nominated by the authority

Notice of decision

As soon as is reasonably practicable after the hearing, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to the complainant, the Subject Member, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.