

GOVERNANCE AND AUDIT COMMITTEE

Tuesday, 15th November, 2022

10.00 am

**Council Chamber, Sessions House, County Hall,
Maidstone**





AGENDA

GOVERNANCE AND AUDIT COMMITTEE

Tuesday, 15th November, 2022, at 10.00 am
Council Chamber, Sessions House, County
Hall, Maidstone

Ask for: **Katy Reynolds**
Telephone: **03000 422252**

Membership (12)

Conservative (7)	Mrs R Binks (Chairman), Mr N J D Chard, Mr D Jeffrey, Mr H Rayner, Mr R J Thomas, Mr S Webb and Vacancy
Labour (1)	Mr A Brady
Liberal Democrat (1):	Mr A J Hook
Green and Independent (1)	Mr M A J Hood
Independent Member (1)	Dr D A Horne

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

1. Introduction/Webcasting
2. Substitutes
3. Declarations of Interest in items on the agenda for this meeting
4. Minutes of the Meeting Held on 29 September 2022 (Pages 1 - 6)
5. Treasury Management Update (Pages 7 - 18)
6. Committee Chairman's Annual Report to the Council (Pages 19 - 24)
7. SEND Transport Review Report - Management Response Update (to follow)

8. Update Report on Audit RB27 - 2022 (Traveller Service - Site Allocation and Pitch Fee Collections) and RB08-2022 (Transfer of Property Functions to KCC from GEN2 - Performance Management) (Pages 25 - 38)
9. KCC Annual Customer Feedback Report 2021-22 (Pages 39 - 74)
10. Covert Enforcement Techniques Activity (Pages 75 - 96)
11. External Audit - Progress Report and Sector Update (Pages 97 - 108)
12. Other items which the Chairman decides are urgent

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Benjamin Watts
General Counsel
03000 416814

Monday, 7 November 2022

Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.

KENT COUNTY COUNCIL

GOVERNANCE AND AUDIT COMMITTEE

MINUTES of a meeting of the Governance and Audit Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Thursday, 29 September 2022.

PRESENT: Mrs R Binks (Chairman), Mr N J D Chard, Mr A J Hook, Mr M A J Hood, Mr D Jeffrey, Mr H Rayner, Mr R J Thomas, Mr S Webb and Dr L Sullivan (Substitute)

ALSO PRESENT: Mr P Oakford

PRESENT VIRTUALLY: Dr D Horne

IN ATTENDANCE: Mr B Watts (General Counsel), Mr J Idle (Head of Internal Audit), Mr Parris Williams, Mr R Benjamin (Internal Audit Manager), Mr J Betts (Interim Corporate Director of Finance) and Ms F Smith (Audit Manager), Ms D Chisman (Principal Auditor), Mr R Smith (Audit Manager), Ms A Palmer (Principal Auditor) and Ms K Reynolds (Democratic Services Officer)

UNRESTRICTED ITEMS

50. Substitutes

(Item 2)

Apologies for absence had been received from Mr Brady for whom Dr Sullivan was present as substitute. The Democratic Services Officer informed the Committee that Dr Horne was attending the meeting virtually.

51. Declarations of Interest in items on the agenda for this meeting

(Item 3)

There were no declarations of interest.

52. Minutes of the Meeting Held on 21 July 2022

(Item 4)

RESOLVED that subject to the addition of the Leader's attendance, the minutes of the meeting held on 21 July 2022 are correctly recorded and that they be signed by the Chairman.

53. Annual Governance Statement - Verbal Update

(Item 5)

1. The General Counsel told the Committee that the first draft of the Annual Governance Statement for Members' consideration would be brought to a future meeting of the Governance and Audit Committee. The draft had been purposely

delayed to ensure that the findings of the 'SEND Transport Lessons Learnt Review' could be adequately captured in the statement.

2. RESOLVED to note the verbal update.

54. Internal Audit Progress Report

(Item 6)

1. The Internal Audit Manager introduced the report which provided detailed summaries of completed Audit reports for the period July to August 2022. It was highlighted that data analytics testing had been used to carry out audit 'RB25-2022 School Themed Review – Credit Cards'. The Internal Audit Manager said that the current Internal Audit six month rolling plan was designed to cover the period of June to November 2022. The service was reviewing the plan in line with emerging risks and priorities. Horizon scanning was being undertaken and would be informed by the 'Risk in Focus' report by the Institute of Internal Auditors. An update on the Internal Audit plan would be provided to the Committee at the next appropriate date.
2. The General Counsel spoke as a representative of the Corporate Management Team on 'CA03-2022 Equalities Act (Duties) 2010'. It was said that there had been decisions taken by Cabinet Members and Corporate Directors where the relevant considerations were not made in relation to equalities. The General Counsel said as part of the introduction of the Chief Executive model and to reflect the role and responsibilities of the Chief Executive, the decision-making processes were being reviewed and revised from a governance perspective.
3. The Head of Internal Audit drew attention to the 'RB30-2022 Kent and Medway Business Fund'. He highlighted the high-risk area for development relating to the previously written off high value debts without adequate scrutiny, challenge and authorisation by the Corporate Director of Finance as required under the Council's Financial Regulations.
4. In response to questions and comments from Members it was said:
 - a) As the Cabinet Member and Deputy Cabinet Member for Economic Development had sent their apologies for this meeting, 'RB30-2022 Kent and Medway Business Fund' would be brought back to the 19 October 2022 meeting of the Governance and Audit Committee.
 - b) There had been a number of audits deferred or removed from the Audit Plan to allow audit resources to be diverted to the SEND Transport Lessons Learned Review.
 - c) The prospects for improvement for the 'RB25-2022 – School Themed Review – Credit Cards' audit had been omitted from the report. The information would be circulated to the Committee after the meeting.
 - d) The General Counsel said that the action plan and management response to the audit findings of 'CA03-2022 Equalities Act (Duties) 2010' included an enhanced checking process of decisions. The General Counsel would encourage officers and Heads of Service involved in decision-making to complete the EqIA e-learning module on DELTA.
 - e) It was said that the 'RB05-2022 – KCC Estate Review' audit was being carried out through an embedded assurance approach.
5. RESOLVED to note the report for assurance.

55. SEND Transport Review Report

(Item 7)

1. The Chairman introduced the Internal Audit review which had been commissioned by the Chief Executive (Head of Paid Service when commissioned), General Counsel and the s.151 Officer following significant and well publicised service failures in the redesign of Special Educational Needs and Disabilities (SEND) transport services and the adverse reputational impact upon and loss of confidence in Kent County Council. It was said that the relevant Cabinet Members and officers had not had prior sight of the report and therefore would be invited to future Governance and Audit meetings to respond to the findings of the review.
2. The General Counsel told the Committee that the report was the outcome of an investigative review and should not be considered as an Internal Audit report. As previously agreed, the outcome of the review had been shared with the Governance and Audit Committee Members first, given the vital oversight role set out within the terms of reference for the Committee. The General Counsel formally thanked the Head of Internal Audit and his team for the work that had been carried out to ensure that the review was completed as quickly as possible while protecting the independence and objectivity of the Internal Audit Service.
3. The Head of Internal Audit said that the review highlighted significant governance failures across the Directorates within the Council that ultimately led to the service failures in Home to School Transport for children with special educational needs and disabilities. It was said that if existing and longstanding governance arrangements contained both within the Council's Constitution and its agreed processes had been followed or complied with, particularly those relating to key decisions, project management and risk management, then the service failure may not have occurred.
4. The Head of Internal Audit referred to the report setting out over 90 Key Observations and over 60 Lessons Learnt. He said that it is insufficient to talk about good governance, but that members and officers have to 'live and breathe' good governance.
5. It was also highlighted that some members of the Scrutiny Committee, at meetings in Spring 2022, had expressed doubts as to whether such a review should be undertaken by Internal Audit and explained that prior to commencing the review, the service explained how it remained independent to several parties. He concluded that the manner in which the investigation was undertaken, the unrestricted questions asked to members and what was included in the report would suggest that the independence and professionalism of KCC Internal Audit had been amply illustrated.
6. The Committee were told that the Internal Audit Team would continue to support the organisation by advising and monitoring the actions required to address the observations and lessons learnt from the review.
7. In response to questions and comments from Members it was said that:
 - a) The Governance and Audit Committee would have a role to play in monitoring the management action plan to address the lessons learnt from the review. A meeting had been set up to establish the agendas for both Scrutiny and Governance & Audit to discuss the findings and necessary actions.

- b) The 'Review into the changes to SEND transport' page on the Kent County Council website would be kept updated with the appropriate information.
 - c) The internal audit review of the Annual Governance Statement process was in progress and would be submitted to the General Counsel prior to the completion of the final Annual Governance Statement for 2021-22.
 - d) Members expressed their thanks to Internal Audit for a thorough and frank report.
8. Kent PACT welcomed the report and expressed their ongoing willingness to work together with the Council.
 9. RESOLVED to note the SEND Transport Lessons Learnt Review Report.

56. Internal Audit Annual Report and Opinion
(Item 8)

1. The Head of Internal Audit reported the overall outcomes and key themes from Internal Audit work undertaken during 2021-22. This included the translation of these outcomes to the resultant annual opinion on the Council's systems of governance, risk management and internal control that was incorporated into the Annual Governance Statement as well as the related performance of the Internal Audit service in delivering this work.
2. The Head of Internal Audit told the Committee that whilst the overall opinion of 'Adequate' was consistent with previous years, there were underlying trends that should be noted. It was said that there had been a fall in 'Substantial' audit opinions and an increase in 'Limited' and 'Adequate' opinions. Additionally, the implementation of actions that had been agreed by the Council had been slow or unfulfilled in some areas. This underlying trend could have a significant impact on overall Risk Management within the context of the unprecedented challenges faced by the Council in the last two years.
3. In response to questions from Members it was said that the report and opinion took into consideration the findings of the 'SEND Transport Lessons Learnt Review'.
4. RESOLVED to receive and note this report as a source of independent assurance regarding the risk, control and governance environment across the Council, noting the outcomes from 2021-22 Internal Audit work and the resultant 'Adequate' opinion to the Annual Governance Statement.

57. Other items which the Chairman decides are urgent
(Item 9)

58. Internal Audit Progress Report and Opinion on ICT04-2022 IT Data Security for DSP Toolkit
(Item 10)

1. The Internal Audit Manager introduced the report which highlighted the key strengths and areas for development identified in the audit of the IT Data Security for the DSP Toolkit.
2. RESOLVED that the report be noted for assurance.

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From:	Peter Oakford, Deputy Leader and Cabinet Member for Finance, Traded and Corporate Services Zena Cooke, Corporate Director Finance
To:	Governance and Audit Committee – 15 November 2022
Subject:	Treasury Management mid-year update
Classification:	Unrestricted
Future Pathway of report	County Council

Summary: This report provides an overview of Treasury Management activity and developments in 2022-23 to the end of September 2022.

Recommendation: Members are asked to endorse this report and recommend that it is submitted to County Council.

1. Introduction

- 1.1 This report covers Treasury Management activity up to the end of September 2022 and developments in 2022-23 up to the date of this report.
- 1.2 If agreed by Members, this report will be presented to County Council.
- 1.3 The Chartered Institute of Public Finance and Accountancy's Treasury Management Code (CIPFA's TM Code) requires that authorities report on the performance of the treasury management function at least twice yearly (mid-year and at year end). This report therefore ensures this Council is embracing Best Practice in accordance with CIPFA's recommendations.
- 1.4 The Council's Treasury Management Strategy for 2022-23 was approved by the County Council on 10 February 2022.
- 1.5 The Council has both borrowed and invested substantial sums of money and is therefore exposed to financial risks including the loss of invested funds and the revenue effect of changing interest rates. The successful identification, monitoring and control of risk are therefore central to the Council's treasury management strategy. This report covers treasury activity and the associated monitoring and control of risk.

2. External context

- 2.1 **Economic background:** The following economic commentary has been provided by the Council's retained treasury advisor, Arlingclose.

- 2.2 The ongoing conflict in Ukraine has continued to put pressure on global inflation and the economic outlook for UK and world growth remains weak.
- 2.3 The economic backdrop during the April to September period continued to be characterised by high oil, gas and commodity prices, ongoing high inflation and its impact on consumers' cost of living, no imminent end in sight to the Russian invasion of Ukraine and its associated impact on the supply chain, and China's zero-Covid policy.
- 2.4 Central Bank rhetoric and action remained robust. The Bank of England, Federal Reserve and the European Central Bank all pushed up interest rates over the period and committed to fighting inflation, even when the consequences were in all likelihood recessions in those regions.
- 2.5 UK inflation remained extremely high. Annual headline CPI hit 10.1% in July, the highest rate for 40 years, before falling modestly to 9.9% in August. RPI registered 12.3% in both July and August.
- 2.6 The labour market remained tight through the period but there was some evidence of easing demand and falling supply. The unemployment rate for April fell to 3.8% and declined further to 3.6% in July. Although now back below pre-pandemic levels, the recent decline was driven by an increase in inactivity rather than demand for labour. Pay growth in July was 5.5% for total pay (including bonuses) and 5.2% for regular pay. Once adjusted for inflation, however, growth in total pay was -2.6% and -2.8% for regular pay.
- 2.7 Consumer confidence declined to a record low of -44 in August, down -41 in the previous month. Quarterly GDP fell -0.1% in the April-June quarter driven by a decline in services output, but slightly better than the 0.3% fall expected by the Bank of England.
- 2.8 The Bank of England increased the official Bank Rate to 2.25% over the period. From 0.75% in March, the Monetary Policy Committee (MPC) pushed through rises of 0.25% in each of the following two MPC meetings, before hiking by 0.50% in August and again in September. August's rise was voted by a majority of 8-1, with one MPC member preferring a more modest rise of 0.25%. The September vote was 5-4, with five votes for an 0.5% increase, three for an 0.75% increase and one for an 0.25% increase. The Committee noted that domestic inflationary pressures are expected to remain strong and so given ongoing strong rhetoric around tackling inflation further Bank Rate rises should be expected.
- 2.9 On 23 September the UK government, following a change of leadership, announced a raft of measures in a 'mini budget', loosening fiscal policy with a view to boosting the UK's trend growth rate to 2.5%. Sterling declined and gilt yields increased by between 0.7% - 1% for all maturities with the rise most pronounced for shorter dated gilts. Due to pressure on pension funds, the Bank of England announced a direct intervention in the gilt market to increase liquidity and reduce yields.

- 2.10 Bank of England policymakers noted that any resulting inflationary impact of increased demand would be met with monetary tightening, raising the prospect of much higher Bank Rate and consequential negative impacts on the housing market.
- 2.11 After hitting 9.1% in June, annual US inflation eased in July and August to 8.5% and 8.3% respectively. The Federal Reserve continued its fight against inflation over the period with a 0.5% hike in May followed by three increases of 0.75% in June, July and September, taking policy rates to a range of 3% - 3.25%.
- 2.12 Annual Eurozone CPI inflation reached 9.1% in August, with energy prices the main contributor but also strong upward pressure from food prices. Inflation has increased steadily since April from 7.4%. In July the European Central Bank increased interest rates for the first time since 2011, pushing its deposit rate from -0.5% to 0% and its main refinancing rate from 0.0% to 0.5%. This was followed in September by further hikes of 0.75% to both policy rates, taking the deposit rate to 0.75% and refinancing rate to 1.25%.
- 2.13 Uncertainty remained in control of financial market sentiment and bond yields remained volatile, continuing their general upward trend as concern over higher inflation and higher interest rates continued to dominate.
- 2.14 Over the period the 5-year UK benchmark gilt yield rose from 1.41% to 4.40%, the 10-year gilt yield rose from 1.61% to 4.15%, the 20-year yield from 1.82% to 4.13% and the 50-year yield from 1.56% to 3.25%. The Sterling Overnight Rate (SONIA) averaged 1.22% over the period.

3. Local context

- 3.1 At 31 March 2022 the Council had borrowings of £826.0m and investments of £463.8m arising from its revenue and capital income and expenditure. The underlying need to borrow for capital purposes is measured by the Capital Financing Requirement (CFR), while usable reserves and working capital are the underlying resources available for investment. The Council's current strategy is to maintain borrowing and investments below their underlying levels, known as internal borrowing, in order to reduce risk and keep interest costs low. This strategy is regularly reviewed with the Council's treasury advisors taking account of capital spending plans and available cash resources.
- 3.2 The treasury management position on 31 March 2022 and the change over the 6 months to 30 September 2022 is shown in the following table.

	31-Mar-22	2022-23	30-Sep-22	30-Sep-22
	Balance £m	Movement £m	Balance £m	Average Rate %
Long-term borrowings	826.0	-3.9	822.1	4.48
Total borrowing	826.0	-3.9	822.1	4.48
Long-term investments	296.4	34.1	330.5	3.45
Short-term investments	36.5	-3.9	32.6	1.55
Cash and cash equivalents	130.9	-17.9	113.0	2.06
Total investments	463.8	12.3	476.1	3.02
Net borrowing	362.2	-16.2	346.0	

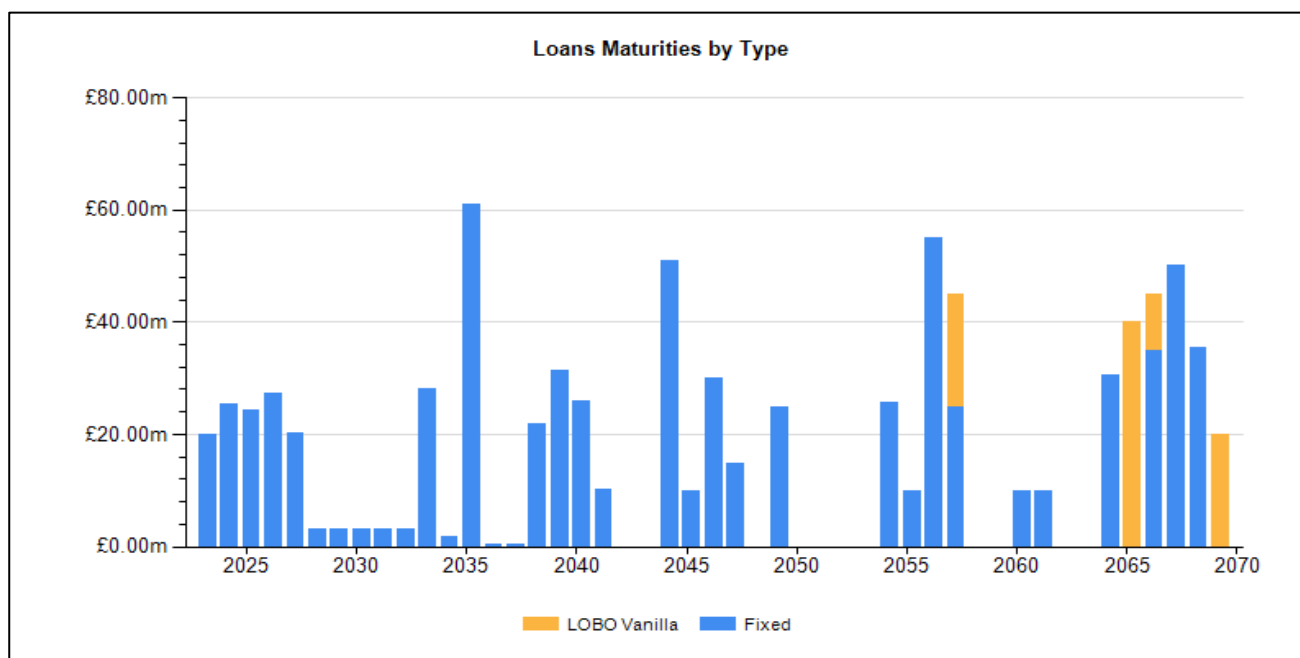
4 Borrowing Strategy during the period

- 4.1 The Council's chief objective when borrowing has been to strike an appropriately low risk balance between securing low interest costs and achieving cost certainty over the period for which funds are required, with flexibility to renegotiate loans should the Council's long-term plans change being a secondary objective.
- 4.2 At 30 September 2022 the Council held £822.09m of loans as part of its strategy for funding previous capital programmes. No new borrowing has been undertaken in the year to date and £3.88m of existing loans have been allowed to mature without replacement. This strategy enabled the Council to reduce net borrowing costs (despite foregone investment income) and reduce overall treasury risk.
- 4.3 As noted under section 2 above, gilt yields increased over the period and were subject to high volatility towards the end of the period which had a direct impact on PWLB rates.
- 4.4 Interest rates rose by over 2% during the period in both the long and short term. As an indication the 5-year maturity certainty rate rose from 2.30% on 1st April to 5.09% on 30th September; over the same period the 30-year maturity certainty rate rose from 2.63% to 4.68%.
- 4.5 Officers are currently exploring the possibility of rescheduling a portion of the Council's long dated market debt in the second half of the year with a view to reducing overall interest costs. Any refinancing will be undertaken in accordance with the Council's approved borrowing strategy for the year.
- 4.6 The Council continues to hold LOBO (Lender's Option Borrower's Option) loans where the lender has the option to propose an increase in the interest rate at set dates, following which the Council has the option to either accept the new rate or to repay the loan at no additional cost. Rising interest rates increases the likelihood of a lender exercising their option although no banks exercised their option during the period.

4.7 The Council's borrowing activity in the 6 months to 30 September is as follows:

	31/03/2022	2022-23	30/09/2022	30/09/2022	30/09/2022
	Balance	Movement	Balance	Average Rate	Value Weighted Average Life
	£m	£m	£m	%	yrs
Public Works Loan Board	426.94	-1.33	425.61	4.70%	15.20
Banks (LOBO)	90.00	0.00	90.00	4.15%	38.97
Banks (Fixed Term)	291.80	0.00	291.80	4.40%	36.01
Streetlighting project	17.23	-2.55	14.68	1.80%	11.74
Total borrowing	825.97	-3.88	822.09	4.48%	25.13

4.8 The maturity profile of the Council's outstanding debt at 30 September was as follows:



4.9 The following table shows the maturity profile of our debt in 5-year tranches.

Loan Principal Maturity Period	Total Loan Principal Maturing	Balance of Loan Principal Outstanding
Balance 30/09/22		£822,087,994
Maturity 0 - 5 years	£102,487,413	£719,600,581
Maturity 5 - 10 years	£3,247	£719,597,334
Maturity 10 - 15 years	£114,805,742	£604,791,592

Maturity 15 - 20 years	£97,191,592	£507,600,000
Maturity 20 - 25 years	£105,800,000	£401,800,000
Maturity 25 - 30 years	£25,000,000	£376,800,000
Maturity 30 - 35 years	£135,700,000	£241,100,000
Maturity 35 - 40 years	£20,000,000	£221,100,000
Maturity 40 - 45 years	£165,600,000	£55,500,000
Maturity 45 - 50 years	£55,500,000	£0
Total	£822,087,994	

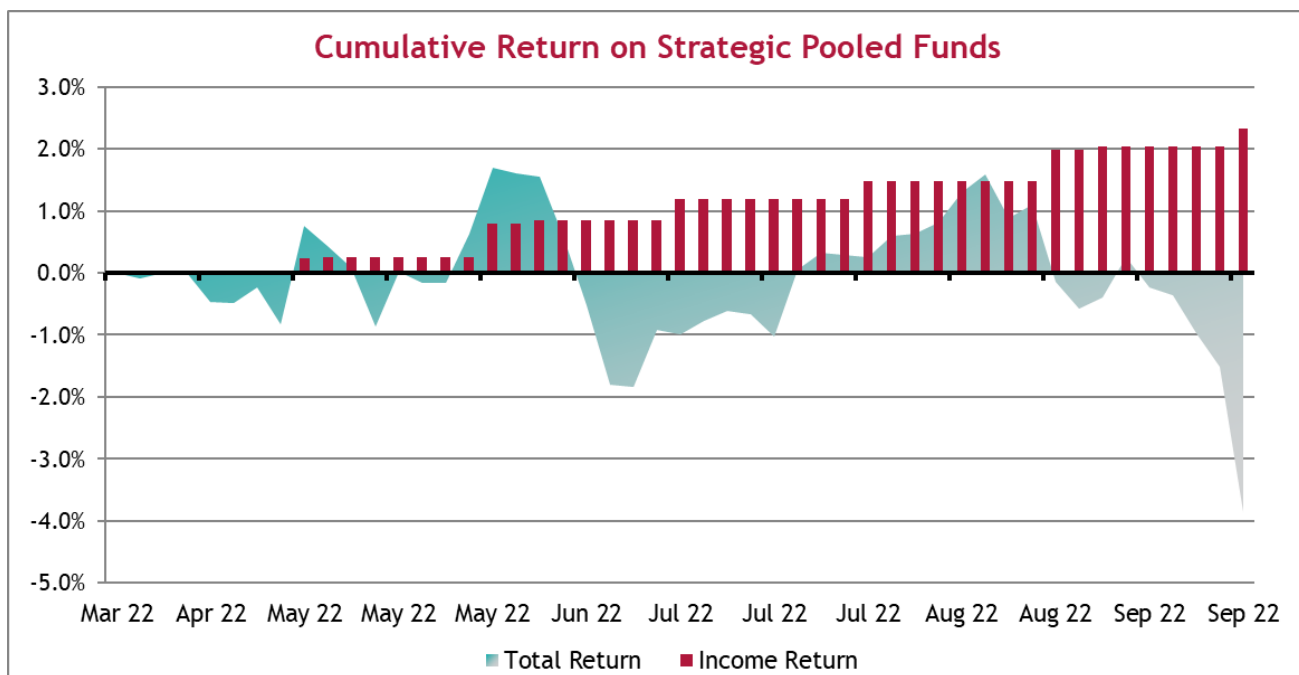
5 Treasury investment activity

- 5.1 The Council holds significant invested funds representing income received in advance of expenditure plus balances and reserves held. During the period the Council's investment balance ranged between £428.8m and £580.4m due to timing differences between income and expenditure.
- 5.2 Both the CIPFA Code and government guidance require the Council to invest its funds prudently, and to have regard to the security and liquidity of its investments before seeking the highest rate of return, or yield. The Council's objective when investing money is to strike an appropriate balance between risk and return, minimising the risk of incurring losses from defaults and the risk of receiving unsuitably low investment income.
- 5.3 The Council continues to hold significant cash balances in money market funds as well as in bank call accounts which have same day availability. This liquid cash was diversified over several counterparties and money market funds to manage both credit and liquidity risks.
- 5.4 During the 6 months the Council loaned £4.6m to the no use empty loans programme. At 30 September the Council had made loans totalling £19.2m to the programme achieving a return of 2.5% which is available to fund general services. £41.3m of covered bonds were purchased in the 6 months bringing the total bond portfolio up to £132.3m. These instruments are negotiable, have the benefit of collateral cover and pay an above base rate return.
- 5.5 The Council's investments during the 6 months to the end of September are summarised in the table below and a detailed schedule of investments as at 30 September is in Appendix 1.

	31-Mar-22	2022-23	30-Sep-22	30-Sep-22	30-Sep-22
	Balance	Movement	Balance	Rate of Return	Average Credit Rating
	£m	£m	£m	%	
Bank Call Accounts	5.0	-4.2	0.8	0.10	A+
Money Market Funds	130.9	-17.9	113.0	2.06	A+
Covered Bonds	91.0	41.3	132.3	2.60	AAA
DMO Deposits (DMADF)	19.5	-19.5	0.0	-	-
Government Bonds	12.0	19.8	31.8	1.59	AA
No Use Empty Loans	14.6	4.6	19.2	2.50	
Equity	1.3	0.0	1.3		
Internally managed cash	274.3	24.0	298.3	2.26	AA
Strategic Pooled Funds	189.5	-11.7	177.8	4.22	
Total	463.8	12.3	476.1	3.02	

6 Externally managed investments

- 6.1 The Council is invested in equity, multi-asset and property funds. Because the pooled funds have no defined maturity date, but are available for withdrawal after a notice period, their performance and continued suitability in meeting the Council's investment objectives are regularly reviewed.
- 6.2 Strategic pooled fund investments are made in the knowledge that capital values will fluctuate however the Council is invested in these funds for the long term and with the confidence that over a three-to-five-year period total returns are reasonably expected to exceed cash interest rates.
- 6.3 During the reporting period the Council responded to a government consultation on the future of the IFRS 9 statutory override, which obligates local authorities to remove the impact of fair value movements on pooled investment funds from their budgets and record them in an unusable reserve. The override is currently due to expire on the 31 March 2023 and the Government has invited views on whether it should be allowed to lapse, extended or made permanent. Officers consider the latter outcome to be the most optimal and have submitted a response to the consultation expressing this position.
- 6.4 **Performance YTD.** The value of our holdings decreased to £177.8m at the end of September 2022, showing an unrealised loss of £11.2m (6.19%) over the period since the end of March 2022. This was partially offset by income earned over the period, and the total return (comprised of both income and capital returns) on the pooled fund investments over the 6 months since 31 March 2022 is -3.86%, as shown in the table below.

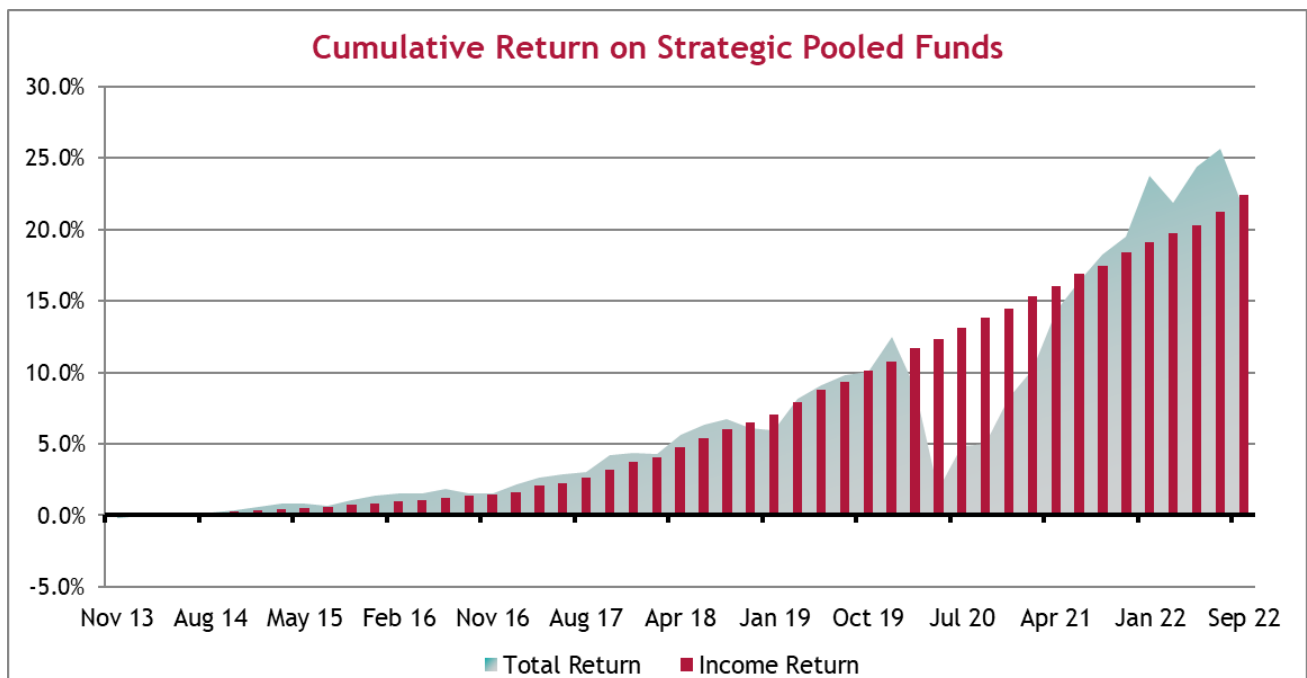


6.5 The market value of the pooled fund investments as at 30 September 2022 compared to the position as at 31 March 2022 is shown in the table below.

Investment Fund	Book cost	31-Mar-22	2022-23	30-Sep-22	30-Sep-22	
		Market Value	Movement	Market Value	6 months return	
					Income	Total
	£m	£m	£m	£m	%	%
Aegon (Kames) Diversified Monthly Income Fund	20.0	20.1	-3.3	16.8	3.21%	-13.10%
CCLA - Diversified Income Fund	5.0	5.2	-0.5	4.7	1.49%	-7.08%
CCLA – LAMIT Property Fund	60.0	67.6	0.5	68.1	1.81%	2.57%
Fidelity Global Multi Asset Income Fund	25.0	23.9	0.0	23.9	2.35%	2.54%
M&G Global Dividend Fund	10.0	14	-1.2	12.8	1.24%	-7.39%
Ninety-One (Investec) Diversified Income Fund	10.0	9.6	-0.8	8.8	2.09%	-6.51%
Pyrford Global Total Return Sterling Fund	5.0	5.1	-0.2	4.9	0.84%	-3.29%
Schroder Income Maximiser Fund	25.0	21.5	-3.9	17.6	4.50%	-13.53%

Threadneedle Global Equity Income Fund	10.0	11.9	-0.8	11.1	1.10%	-5.44%
Threadneedle UK Equity Income Fund	10.0	10.2	-1.2	9.0	2.09%	-9.43%
Total Externally Managed Investments	180.0	189.0	-11.2	177.8	2.33%	-3.86%

6.6 **Performance since inception:** KCC initially invested in pooled funds in 2013. By the end of September 2022 they had achieved a total income return of £40.6m, 22.39%, with a fall in the capital value of the portfolio of £1.8m, -1.02%. Total returns since inception have been far in excess of the returns available from cash and these instruments are an effective way of managing the Council's longer term cash balances. The following chart tracks the returns earned on the pooled funds over the period from inception.



7 Investment benchmarking at 30 September 2022

7.1 The Council's treasury advisor, Arlingclose, monitors the risk and return of some 160 local authority investment portfolios. The metrics over the 6 months to 30 September 2022 extracted from their quarterly investment benchmarking, per the table below, show that the risk within the Kent internally managed funds has been consistent throughout the 6-month period and in line with that of other local authorities. The income return has risen reflecting increased rates payable on our cash investments.

Internally managed investments	Credit Score	Credit Rating	Bail-in Exposure %	Weighted Average Maturity (days)	Rate of Return %
Kent - 31.03.2022	3.17	AA	53	290	0.62
Kent - 30.09.2022	3.09	AA	41	458	2.29
Similar LAs	4.00	AA-	30	2,045	1.70
All LAs	4.29	AA-	55	18	1.72

7.2 The following table shows that overall KCC's investments in strategic pooled funds are achieving a strong income return compared with that of other local authorities.

	Rate of Return – Income only %	Total Rate of Return %
Strategic Funds at 30.09.2022		
Kent	4.22	-3.86
Similar LAs	4.01	n/a
All LAs	3.97	n/a
Total Investments at 30.09.2022		
Kent	3.04	2.24
Similar LAs	2.18	1.46
All LAs	2.06	1.47

8 Actual and forecast outturn

8.1 Over the 6 months to 30 September the Council's strategic investments generated an average total return of -3.86%, comprising a 2.33% income return which is used to support services in year, and -6.19% of unrealised capital loss.

8.2 Interest rates have moved higher and the returns on our cash deposits are expected to continue to improve for the foreseeable future.

8.3 Forecast net debt costs are lower than budget as yields from short-term and variable long-term cash investments have increased.

9 Compliance

9.1 The Corporate Director Finance reports that all treasury management activities undertaken during the quarter complied fully with the CIPFA Code of Practice and the Council's approved Treasury Management Strategy.

10 Treasury Management Indicators

10.1 The Council measures and manages its exposures to treasury management risks using the following indicators:

10.2 **Security:** The Council has adopted a voluntary measure of its exposure to credit risk by monitoring the value-weighted average credit rating of its internally managed investment portfolio. This is calculated by applying a score to each investment (AAA=1, AA+=2, etc.) and taking the arithmetic average, weighted by the size of each investment. Unrated investments are assigned a score based on their perceived risk.

Credit risk indicator	Actual 30/09/2022	Target
Portfolio average credit rating	AA	AA

10.3 **Liquidity:** The Council has adopted a voluntary measure of its exposure to liquidity risk by monitoring the amount of cash available to meet unexpected payments within a rolling three-month period, without additional borrowing.

Liquidity risk indicator	Actual 30/09/2022	Target
Total cash available within 3 months	£150.6m	£100m

10.4 **Interest rate exposures:** This indicator is set to control the Council's exposure to interest rate risk. The upper limits on the one-year revenue impact of a 1% rise or fall in interest rates will be:

Interest rate risk indicator	Actual 30/09/2022	Upper Limit
One-year revenue impact of a 1% <u>rise</u> in interest rates	£1.1m	£10m
One-year revenue impact of a 1% <u>fall</u> in interest rates	-£1.1m	-£10m

10.5 **Maturity structure of borrowing:** This indicator is set to control the Council's exposure to refinancing risk. The upper and lower limits on the maturity structure of borrowing will be:

	Actual 30/09/2022	Upper limit	Lower limit
Under 12 months	2.03%	100%	0%
12 months and within 5 years	10.43%	50%	0%
5 years and within 10 years	0.00%	50%	0%
10 years and within 20 years	25.79%	50%	0%
20 years and within 40 years	34.85%	50%	0%

40 years and longer	26.89%	50%	0%
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Time periods start on the first day of each financial year. The maturity date of borrowing is the earliest date on which the lender can demand repayment.

10.6 **Principal sums invested for periods longer than a year:** The purpose of this indicator is to control the Council's exposure to the risk of incurring losses by seeking early repayment of its investments. The limits on the long-term principal sum invested to final maturities beyond the period end will be:

	Actual	Limit	Limit	Limit
Price risk indicator	30/09/2022	2021/22	2022/23	2023/24
Principal invested beyond year end	£295.1m	£300m	£300m	£300m

11 Recommendation

Members are asked to endorse this report and recommend that it is submitted to Council.

James Graham – Pension Fund and Treasury Investments Manager

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E: James.Graham@kent.gov.uk

28 October 2022

From: Cllr Rosalind Binks, Chairman – Governance and Audit Committee

To: Governance and Audit Committee – 15 November 2022

Subject: Chairman’s Report to the Council

Classification: Unrestricted

Future Pathway of report: County Council

1. Introduction & Purpose of this report

1.1. This is the first Chairman’s Report from the Governance & Audit Committee to the Council. Its purpose is to highlight for Members the role and work of the Committee, to draw attention to some of the governance issues the Committee has considered and finally to highlight key themes that all Members should be sighted on.

2. Committee Membership, Attendance & Training

2.1. The Governance & Audit Committee is a Cross-Party Committee and also includes one independent non-elected and non-voting member appointed by the Committee. The Committee benefits greatly from the diverse knowledge and expertise that all Members and Dr Horne bring to meetings.

The Governance & Audit Committee is currently made up of 10 Members.

Mrs R Binks (Chairman)
 Mr H Rayner
 Mr A Brady
 Mr A Hook
 Mr D Jeffrey
 Mr S Webb
 Mr M Hood
 Mr N Chard
 Mr R Thomas
 Dr D Horne (Independent member)

2.2. The Committee agreed in 2022 that, given the nature of its work, Members of the Governance & Audit Committee, and indeed Members who wish to substitute at meetings, must have training to ensure that the Committee is fit for a changing and challenging environment. That includes both general and one-to-one talks from officers, auditors and CIPFA, as well as regular online update and training materials from external bodies.

2.3. It should also be noted that the various Substitute Members have all participated fully in the training necessary to the meetings that they attend.

2.4. A review of the Committee and its activities by CIPFA was subsequently presented to the Committee. Their comments and suggestions for development and improvement were informally discussed by Members and largely adopted.

3. Activity and Frequency of Meetings

3.1. Prior to 2021/22, the Committee met 4 times a year. However, to properly transact the full range of business, the Committee held 7 meetings in the last financial year 2021/22. For 2022/23 the Committee agreed to meet more frequently in order to appropriately consider key items and has already held 5 meetings up to December 2022.

3.2. During the past 18 months the Committee has considered reports covering the entire breadth of KCC and KCC-related activities. These include:

- annual reports and statements, such as the Annual Governance Statement, the annual Report and Accounts for both KCC and the Kent Pension Fund
- the plans for both Internal and External Audit for the year, and reports on the outcome of their work. During 2021, this has included the new External Audit Value for Money assessment
- policies and frameworks for good governance, such as revised Financial Regulations for the Council, the development of assurance frameworks, the Counter-Fraud Strategy and Treasury Management arrangements
- the Corporate Risk Register, Code of Corporate Governance, Risk Management Policy, Strategy and Programme
- specific items such as the SEND Transport Review and the performance of KCC wholly-owned companies
- reports on lessons learned from audit and government interventions in other Councils.

3.3. The Internal Audit Team, led by Jonathan Idle, planned 57 audits for 2021/22 of which 15 were deferred or removed to provide resources for the SEND Transport Review. For the 22/23 Audit Plan, a new rolling plan approach has been adopted, initially with 26 reports planned. This is in addition to Grant Certification work as well as audits for third parties.

3.4. Audits for 2021/22 have already reported the following assurance opinions:

- 1 No Assurance
- 5 Limited
- 11 Adequate
- 7 Substantial
- 2 High

3.5. With regard to prospects for improvement, most of the audits considered them Good or Very Good. One was viewed as adequate, however two were marked as Uncertain.

3.6. The Committee has already considered several reports including the following:

- Gypsy & Traveller Service – Site Allocations and Pitch Fee Collections
A review of progress is expected shortly. (No Assurance / Uncertain Prospects)
- Kent & Medway Business Fund (Adequate / Good Prospects)
The process for debt write-off was not in accordance with KCC Financial Regulations, primarily due to the funds being non-KCC. This is now being

amended to comply with the regulations, including a retrospective review of previous write-offs.

3.7. The External Auditors, Grant Thornton, reported in April 2022 that while they found no risk of significant weakness in the Council's governance, or arrangements for economy, efficiency and effectiveness, there was one area of significant weakness in financial sustainability, in SEND and High Needs education.

3.8. The Internal Audit team has recently completed an excellent and totally independent review on SEND Transport. This was presented first to the Governance & Audit Committee in September 2022 with complete transparency and is currently being reviewed by Scrutiny. There will also be further review by the Governance & Audit Committee where necessary and it is already evident that changes have and will continue to be made.

4. Reinforcing the Purpose of the Committee

4.1. During 2022, the Committee undertook an external review of its effectiveness. The review, which reported in July 2022, found that the Committee demonstrates features of good practice and recommended increasing the focus of the Committee to make an impact across the Council.

4.2. With that in mind, the Terms of Reference for the Committee are being revised and will be under regular review as the Council's statutory responsibilities change over time. It is important that Committee Members understand these Terms and how they differ from those of the Scrutiny Committee. It is also important that all Council Members understand the role of this important non-executive Committee as a key part of our governance.

4.3. In the coming year, Committee Member briefings will be organised with internal and external auditors as and when required. A Chairman's report will be produced for Council at least annually.

4.4. The Committee's agendas are being restructured to enable Members time to better focus on those issues that require most attention and also consider issues which present potential future risks.

4.5. Kent County Council faces an environment of ever-increasing challenges following the long Covid lockdown with substantial increases in demand in many areas, recruiting and retaining staff and growing financial pressures. This Council is certainly not alone in navigating these difficulties and a few Councils have already floundered in a very public manner. One common thread to those cases has been inadequate governance: not necessarily a failure to recognise a problem but a failure to challenge, to ask questions and to ensure that the issue is dealt with promptly.

4.6. Good governance is based on sound ethical culture, transparency for all stakeholders, clear sustainable outcomes, effective performance that provides value for money, continuing review and improvement, risk management, accountability. It is not merely historic but must also consider the future of the Council with increased risk to KCC's ability to provide efficient and effective services and ensure the Council provides the best value for money with public funds.

4.7. To this regard, increased focus will be placed by the Committee on questioning those with overall responsibility. A Limited or No Assurance audit report will automatically be examined at the next Committee meeting in the presence of the relevant Director, as well as the Cabinet Member or Deputy, who is assumed to be equally fully informed. This will be followed by a review of progress within 6 months, to gain the assurance that is required

4.8. There may be issues where the Committee sees the need for a Deep Dive, but it is largely the work of Internal Audit to gain an understanding of how governance procedures are followed in practice and to present the results to the Committee for comment and assurance.

4.9. These changes and the heightened focus of the Committee will also be reflected in the Annual Governance Report that accompanies the accounts.

5. Focus on the Future & Actions for the Coming Year

5.1. Overall, within the Committee and Council there is a good understanding of governance requirements and procedures. However, rising demand for KCC services presents a serious challenge for the Council. Resources, both financial and non-financial are finite, therefore there is a ceiling of activity beyond which good governance cannot be assured.

5.2. The latest Internal Audit Opinion has remained unchanged from recent years at Adequate but there are underlying trends that give cause for concern. Throughout the Council, there is now a greater awareness of the prompt implementation of agreed improvement actions, the need for clearly-defined responsibilities and accountability within and across directorates and of course realistic consideration of available resources. This is particularly relevant when considering the viability of current activities and services and planning for the future.

5.3. A recent report from Grant Thornton highlighted four key areas that can and have caused failings at various councils:

- Transparency and conduct
- Officer / Member interaction
- Assessment and decision-making
- Governance

5.4. Key Actions for the Committee over the coming year are to

- Be vigilant over risks and mitigations for the financial challenges facing KCC
- Monitor service delivery
- Progress revised Terms of Reference for the Committee.
- Take forward remaining actions from the review of the Committee's effectiveness

Author:
Cllr Rosalind Binks
Chairman, Governance & Audit Committee
November 2022

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By: Natalie Liddiard, Head of Gypsy and Traveller Service
Tom Marchant, Interim Head of Countryside and Community
Development

To: Governance and Audit Committee – 15 November 2022

Subject: Update on Progress Following Internal Audit RB27-2022

Classification: Unrestricted

Summary:

This progress report provides an update on the Management Response to the Internal Audit conducted on the Gypsy and Traveller Service -Site Allocation and Pitch Fee Collections completed in February/March 2022.

Recommendation:

The progress made so far is noted.

1. Introduction
 - 1.1 KCC owns and manages seven sites across the County which are used to accommodate the Gypsy and Traveller community and manages a further two on behalf of Maidstone Borough Council until the end of the 2022/23 financial year.
 - 1.2 There is a variety of legislation in force which impacts on the requirement of councils to provide support to gypsies and travellers, and where sites for gypsies and travellers are provided. The Mobile Homes Act 2013 provides security of tenure to residents of mobile home sites where they own the home they live in and rent the pitch from the site owner. From April 2011, this included all local authority Gypsy and Traveller sites.
 - 1.3 A public Gypsy and Traveller pitch can be viewed as the equivalent to social rented housing and is for Gypsies and Travellers only, who cannot meet their accommodation need via private provision.
 - 1.4 It evolved through several member decisions historically (circa 1960s) that KCC would provide accommodation sites for the Gypsy and Traveller community. Whilst there is no statutory responsibility on KCC to provide sites, the provision from KCC does assist District and Borough Councils in meeting their statutory responsibilities.
 - 1.5 As KCC has provided these sites for a number of years, KCC is obliged to maintain the site from a landowner/landlord perspective and that all maintenance and council-led services should be provided by the Owner.
 - 1.6 KCC currently owns and manages seven sites, within 5 districts across Kent, which are designated for gypsy and traveller accommodation. These sites provide 128 pitches of varying size.
 - 1.7 The Service was audited in March 2022, during which time the Head of Service was absent from work and had been since June 2021. Whilst there were temporary management measures in place, this absence had an impact on the Team and its performance.

1.8 The interim management arrangement welcomed the audit and worked well with the audit team to provide all information requested in a timely manner and discussed operational issues openly.

2. Areas for Development

2.1 The Head of Service and Amanda Palmer, Principal Auditor, meet on a quarterly basis to report progress following the Internal Audit and meet on an 'ad-hoc' basis to discuss policy and approach, and provide feedback when needed.

2.2 Progress has been made on all issues identified by the Internal Audit.

2.3 Issue 1 - Gypsy and Traveller Pitch Allocation Policy
The current Gypsy & Traveller Pitch Allocations Policy 2012 is significantly out of date. The Policy was reviewed and updated in 2019, but the new version was not agreed as the GTS now reports to the Growth, Economic Development & Communities Cabinet Committee and no papers have been presented since this change in formal reporting lines.

The pitch allocation policy has been reviewed and redrafted and is currently in 'pre-consultation' phase. Pre-Consultation activity included review and comment from internal KCC departments, namely Counter Fraud, Internal Audit, and the Public Protection Intelligence Team and external partners including East Sussex County Council, Dartford Borough Council, Tunbridge Wells Borough Council, Sevenoaks District Council and the London Gypsy and Traveller Organisation.

The current draft has been presented to the GET Divisional Management Team and is being presented for approval at the Growth, Economic Development and Communities Cabinet Committee on 22nd November 2022. Subject to approval, it is planned that formal consultation will start in December 2022 and end in February 2023, with final sign off for the amended policy in May 2023.

2.4 Issue 2 – Documented Procedure Notes
The currently available process documents do not sufficiently outline the application, assessment and approval processes; including roles and responsibilities.

This is linked to Issue 1, once the new Pitch Allocation Policy has been agreed, a documented procedure note supported with a detailed training session, will be established to ensure full adherence to process. This will be supported by ongoing internal reviewing and 'dip sampling'.

2.5 Issue 3 – Rental Fees
The current pitch fees have not been formally agreed by the relevant Committee or published in accordance with legislative guidance

Where a Local Authority charges an annual fee in addition to a pitch fee (weekly pitch rent), the Mobile Homes Act 2013 requires the Local Authority to publish a fees policy. Currently, KCC only charges pitch licence holders a weekly rent and does not charge an additional annual fee. As such, there is no policy to be published at this time.

2.6 Issue 4 – Case Management System

The new case management system is not being used to its full potential.

The case management system that was being used by the Service is not fit for purpose and did not meet their needs. A number of discussions have happened with the GET Infrastructure Business Partner and background work has been completed to identify the specification and needs of a new case management system. This has now been passed to a Solutions Commissioner, in the Technology Commissioning and Strategy Team to progress.

2.7 Issue 5 – Processing of Pitch Applications

From our review of a sample of 12 applications across various sites, a high number of inconsistencies were identified in the records kept and the way applications have been assessed and scored

The current policy and process for pitch applications was discussed, explained and an interim procedure note developed by the new Head of Service to ensure that applications were processed consistently, fairly and in accordance with the current Pitch Allocation Process in May 2022. This explicitly states that the process that must be followed and provides templates for all communications. This has been implemented effectively and training provided and is working well during this interim period.

Once the new Pitch Allocation Policy has been approved and implemented, a new process will be documents and published, with ongoing internal review to ensure full adherence to published process.

2.8 Issue 6 – Fraud Risks

Staff have not received fraud awareness training or made any fraud referrals to the Counter Fraud Team

Discussions have taken place with the KCC Counter Fraud team and bespoke training session was originally diarised for September 2022, however due to unexpected absences this did not go ahead and the session has been rescheduled for 25th November 2022.

2.9 Issue 7 – Outstanding Debt

The current level of outstanding debt for pitch fees is £384,466 of which £323,031 (84%) is more than 60 days overdue. There is no debt recovery policy or procedure.

A significant amount of work has been completed to tackle the rent and water arrears carried by the Service. The KCC Debt Recovery processes have been adopted and a clear escalation process established. Debt is defined as the total of rent arrears and unpaid water charges and is dealt with as a combination for reporting purposes but is separated and defined individually as part of our legal process. However, all debt recovery action is applicable to both types of debt. At the time of writing this report, there has been a reduction in overall debt of approximately 11% achieved since June 2022, with a further 23 cases passed on to our legal advisors for formal action and a further 29 payment plans agreed and being maintained.

2.10 Issue 8 – Water Recharges

The current agreement with water companies whereby KCC pays the water bills and recharges these costs to the pitch tenants is administratively costly and ineffective.

The administrative process is necessary to support the infrastructure that is in place across the portfolio of sites. Whilst the process is not the most effective, there is limited scope to change it with the on-site infrastructure that is in place.

Investigations into the feasibility and cost to change the set ups on site have started however the cost is not something that can be met from the current service budget and a further project would need to be scoped with funding identified to make any progress on this.

2.11 Issue 9 – Unallocated Receipts

There is currently £26,800 of funds that have been received from tenants and/or from other Local Authorities for those tenants in receipt of housing benefit but not allocated to the relevant invoice.

Several conversations between the Service and KCC Finance Teams have taken place since the Audit to resolve this issue, and there have been a number of changes in process to ensure monies are allocated to the correct accounts. Due to the nature of the payments received, there will always be a reliance on the creditor (residents, Housing Authorities, DWP) to apply the correct references to payments so they can be allocated correctly. As this is not always completed, the Service conducts frequent checks on the finance systems and allocates payments manually to ensure there is a very limited number of unallocated receipts at any time.

3. Prospects for Improvement

In response to the areas identified in the Internal Audit,

3.1 *Currently the post of Head of the GTS is vacant. Although action plans have been developed to address the issues raised in this report it is unclear whether they will be prioritised by the new post-holder or whether the timescales are realistic.*

The new Head of Service started in post on 4th July 2022 and has focussed on the concerns raised in the Internal Audit as well as put plans are in place to review all essential Service policies, processes, and documentation to ensure the service is compliant and effective in day-to-day operations. It has been quickly recognised that the Service needs to establish a robust response to site issues and maintain momentum when dealing with issues of non-compliance and debt, whilst also dealing with the existing operational issues and maintaining focus on the community and our residents.

3.2 *It is unclear whether Case Management System that was purchased for the GTS is fit for purpose as a significant amount of work remains to implement it.*

The case management has been deemed as 'not fit for purpose' and as per section 2.6, work is underway to procure a more suitable case management system to benefit the Service.

4. Conclusion

- 4.1 Based on all the points reported in sections 2 and 3 of this report, we feel that the Service has shown significant improvement since the Internal Audit, and if the Internal Audit was conducted now, the outcome would be much improved.
- 4.2 Based on the improvements and progress against the Management Response, we feel the Service is now demonstrating 'good' Prospects for Improvement.

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RB27-2022 – Traveller Service – Site Allocation & Pitch Fee Collections

Audit Opinion	No Assurance
Prospects for Improvement	Uncertain

The last audit completed regarding the Gypsy and Traveller Service (GTS) was in 2014 and this identified several areas for improvement including inconsistent processing of pitch allocations and lack of central records being retained. In 2014, an audit opinion of Limited was assigned as significant issues were identified that could cause high risk to the Council.

The issues identified as a result of the current audit are identical to those that were highlighted 8 years ago.

Additionally, further significant issues have also been identified, such as the current GTS Policy being out of date, the new case management system not being used, and a high level of outstanding debts owed by pitch tenants with no debt recovery policy or procedure in place.

A case management system was implemented on 1st June 2021; however Internal Audit have identified that this does not hold up to date records and although there is some data on the system it is not possible to ascertain what or how much as the reporting functionality cannot currently be used.

There is also a historic undocumented agreement in place between KCC and water suppliers whereby KCC pays the water supply bills for the pitches managed and recover the debt from the tenants. This is administratively costly and has proved not to be effective as large amounts are owed to the Council by tenants for their water bills.

Furthermore, a project carried out by the GTS has identified that all tenants have been either over charged or undercharged for their water supply.

The weaknesses identified with the new case management system are perhaps more concerning, as GTS has invested in a system that is not being used effectively and has not been populated with the required data nearly a year after initial implementation.

Areas for Development

- The current GTS Policy is dated 2012 and is significantly out of date. The Policy was reviewed and updated in 2019, but the new version has not been agreed by the Environment & Transport Cabinet Committee and the service has been unable to move forward.
- The currently available process documents do not sufficiently outline the application, assessment and approval processes; including roles and responsibilities.
- The current pitch rental fees have not been formally agreed by the relevant Committee and fees have not been published in accordance with legislative guidance.
- The new case management system is not being used to its full potential.
- From the review of a sample of 12 applications across various sites, a high number of inconsistencies were identified in the records kept and the way applications have been assessed and scored.
- Staff have not received fraud awareness training or made any fraud referrals to the Counter Fraud Team.
- The current level of outstanding debt for pitch fees is £384,466 of which £323,031 (84%) is more than 60 days overdue. There is no debt recovery policy or procedure.
- The current agreement with water companies whereby KCC pays the water bills and recharges these costs to the pitch tenants is administratively costly and ineffective.
- There is currently £26,800 of funds that have been received from tenants and/or from other Local Authorities for those tenants in receipt of housing benefit but not allocated to the relevant invoice.

Prospects for Improvement

Our overall opinion of Uncertain for Prospects for Improvement is based on the following factors:

- Currently the post of Head of the GTS is vacant. Although action plans have been developed to address the issues raised in this report it is unclear whether they will be prioritised by the new post-holder or whether the timescales are realistic.
- It is unclear whether Case Management System that was purchased for the GTS is fit for purpose as a significant amount of work remains to implement it.

Internal Audit's overall Audit Opinion of No Assurance is based on the following Key Strengths and Areas for Development:

Key Strengths

- For a sample of tenants examined, Internal Audit established that accurate invoices had been raised for their pitch rental fees (this does not include water charges or the debt recovery of the invoices).

Summary of management responses

	Number of issues raised	Management Action Plan developed	Risk accepted and no action proposed
High Risk	8	8	0
Medium Risk	1	1	0
Low Risk	0	0	0

From: Peter Oakford – Deputy Leader and Cabinet Member for Finance,
Corporate and Traded Services

Rebecca Spore – Director of Infrastructure

To: Governance & Audit Committee – 15 November 2022

Subject: Update Report on RB08-2022 (Transfer of Property Functions to KCC
from Gen² – Performance Management)

Classification: Unrestricted

Summary: This report seeks to update the Governance & Audit Committee on the progress of the Transfer of Property Functions to KCC from Gen² – Performance Management Action Plan being implemented and give assurance that robust procedures and processes are in place.

Recommendation: The Governance & Audit Cabinet Committee is asked to note the progress that has been made following the initial presentation of the Audit RB08-2022 and the further improvement work underway to embed the Performance Information Management System (PIMS) in the division.

1. Introduction

1.1 Services provided to Kent County Council (KCC) by Gen² Property Ltd transferred back to KCC on 02 April 2020, along with most of the Gen² Property Staff under TUPE arrangements.

1.2 An internal audit report was presented to the Council regarding the performance management relating to the services returned to KCC. The outcome from the report was that Internal Audit were only able to provide limited assurance on the Performance Management systems, although there were, in its opinion, good prospects for improvement.

2. Current Status

2.1 The audit identified three issues which predominately related to performance monitoring and awareness of a PIMS in accordance with the guidance on Knet.

2.2 Resulting from the audit, a framework PIMS has been developed and approved by the Infrastructure Divisional Management Team.

2.3 The PIMS follows the principles laid out in International Standard ISO9001:2015 for quality management systems but is not an accredited system. By following the standard as far as is reasonably practicable, we are able to lay out a clear methodology for the creation, implementation, collection and review of performance information that meets and exceeds the corporate expectation delivered through the Performance Management Toolkit.

2.4 Following the approval of the PIMS framework, work has now moved to the development and implementation of performance indicators that Infrastructure will use from April 2023. The period between now and April 2023 allows a period to test that the appropriate processes and methods of data capture are satisfactory and are not giving adverse results or driving perverse incentives.

2.5 Additionally, there has been a significant change in the service due to the restructuring and retendering of the Facilities Management contracts from 1 November 2022. As a result of this, is a complete rewrite being undertaken of the contractual performance management arrangements under these contracts. At the time of writing, insufficient time has passed since 1 November 2022 to enable this work to be undertaken.

2.6 The Performance Information System framework which Infrastructure are adopting has been discussed with audit who have confirmed that the PIMS documentation meets expectations in terms of detailing the solution that will be put in place.

3. Financial Implications

It was recognised by the auditor that if PIMS is implemented as planned, there will be excellent visibility of resources and performance.

4. Legal implications

The PIMS relates to internal processes within the division and there are no legal implications to the Council.

5. Governance

Rebecca Spore, as Director of Infrastructure, will be the Accountable Officer for the PIMS. Responsibility for the implementation resides with the Service Delivery Assurance Team within Infrastructure.

6. Conclusions

Significant progress has been made in progressing the solution to the outcomes of the audit. Infrastructure are now at the stage of implementing the solution and embedding it within business as usual activity.

7. Recommendation:

The Governance & Audit Cabinet Committee is asked to note the progress that has been made following the initial presentation of the Audit RB08-2022 (Transfer of Property Functions to KCC from GEN2 - Performance Management) and the further improvement work underway to embed the PIMS framework in the division.

8. Contact details

<p>Report Author:</p> <p>Kevin Bulled Policy & business planning Manager 03000 410112 kevin.bulled@kent.gov.uk</p>	<p>Relevant Director:</p> <p>Rebecca Spore Director of Infrastructure 03000 416716 rebecca.spore@kent.gov.uk</p>
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RB08-2022 – Transfer of Property Functions to KCC from GEN2 – Performance Management
Audit Opinion
Limited
Prospects for Improvement
Good

Property Services has been at the forefront of KCC's response to the Covid-19 pandemic. Coincident with the transfer from GEN², Property Services had to manage the suspension of capital projects and essential maintenance during the first lock-down and the consequences to the Council's plans to meet its obligations to provide school places. It also had to implement extensive measures to ensure that KCC's offices were "Covid-secure" and it has had a key role in the introduction of KCC's flexible-working practices.

This review found that Property Services collects and documents data about its activities. There is also extensive engagement with stakeholders. However, there was a low level of awareness of KCC's Performance Management Toolkit. Consequently, the Service Areas have not adopted the guidance. Annual business planning has not considered objectives for business-as-usual activities and there have not been any recent reviews that confirm that Property Service's performance indicators, including its corporate performance indicators, are fit for purpose.

Internal Audit's overall Audit Opinion of Limited is based on the following Key Strengths and Areas for Development:

Key Strengths

- Across Property Services, there is extensive engagement with stakeholders. Except for the Facilities Management Service Area, the engagements focus on activities rather than performance.
- Where the four reviewed Service Areas have control over their resources, their monitoring of their activities is not overly dependent on either key individuals or bespoke systems.
- There is a procedure within the Infrastructure Division where risks reported on the risk management system, JCAD, are formally reviewed every two months through meetings between the Strategic Projects Manager and the officers responsible for the Division's risks. The results from these reviews are presented to the Division's Management Team.

Areas for Development

- Performance management across the four reviewed Service Areas does not accord with KCC's Performance Management Toolkit and Data Quality Policy, both of which are based on good practice for ensuring that performance information is fit for purpose.
- Property Services does not use performance information in a systematic way in its risk management reviews.
- Property Services has not tested the extent that its corporate performance and activity indicators are fit for purpose, focus on the delivery of business priorities, and provide a balanced view of the performance across the business.

Prospects for Improvement

Our overall opinion of **Good** for Prospects for Improvement is based on the following:

- Management have accepted the issues identified and appropriate action plans have been developed with action owners assigned.

Summary of management responses

	Number of issues raised	Management Action Plan developed	Risk accepted and no action proposed
High Risk	2	2	N/A
Medium	1	1	N/A
Low Risk	0	0	N/A

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KCC Annual Customer Feedback Report 2021/22

By: Amanda Beer – Deputy Chief Executive
To: Governance and Audit Committee
Date: 15th November 2022
Subject: KCC Annual Customer Feedback Report 2021/22
Classification: Unrestricted

Summary: This report provides a summary of the compliments, comments and complaints recorded by the Council. The report includes statistics relating to customer feedback received by the Council and a sample of complaints considered by the Ombudsman.

Recommendation: The Committee is asked to note the contents of this report for assurance.

1. Introduction

- 1.1 This is the Council's twelfth annual report on compliments, comments and complaints. As the organisation settled back into business as usual this year, we saw
- 1.2 Overall complaints volumes are down slightly this year, there were a number of key changes this year that drove complaints in a number of areas.
- 1.3 For the purposes of this report customer feedback only relates to those comments, compliments and complaints received from members of the public and our external customers. It does not include internal feedback between departments or contractors.

2. Progress in refining practices within KCC

- 2.1 The customer feedback system has been in place for over 4 years, enabling us to breakdown data easily, understand trends and react to evolving issues.
- 2.2 This year training has been focused on investigation training and responding to the Ombudsman particularly in the CYPE directorate.
- 2.3 Next year's training will focus on wider training within Adult Social Care including investigation training. We will also be focusing on improving practices across all Directorates following a difficult year in which the organisation missed Key Performance Indicators (KPIs) in responding to customers.
- 2.4 The Customer Feedback Forum meets monthly to discuss best practice, performance and system developments. This group supports each other with changes to the Customer Feedback Policy, discuss Ombudsman requirements and approaches to contacting customers regarding service changes.

3. Overview of Customer Feedback Received

- 3.1 A compliment is an expression of thanks or congratulations or any other positive remark. (Internal compliments are excluded from this process).
- 3.2 A comment is a general statement about policies, practices or a service as a whole, which has an impact on everyone and not just one individual. A comment can be positive or negative in nature. Comments may question policies and practices, make suggestions for new services or for improving existing services.
- 3.3 A complaint is an expression of dissatisfaction, whether justified or not and however made, about the standard or the delivery of a service, the actions or lack of action by the Council or its staff which affects an individual service user or group of users. This is consistent with the definitions used by other local authorities.
- 3.4 The following table gives an overview of the feedback received by KCC as a whole compared with the previous year.

Table 1 – Feedback received by KCC compared with previous year

Year	Complaints (Stage 1)	Comment	Compliments	Local Government and Social Care Ombudsman complaints
2021/22	5210	285	1208	182
2020/21	5375	571	1351	152
Difference	-165	-286	-153	29
% difference	-3%	-50%	-12%	19

- 3.5 We saw a decrease in the volumes of cases in 2021/22, in the first quarter of the year we were still in restrictions for Covid and quarter 3 saw the introduction of the Omicron variant. The nature of complaints and comments received during the pandemic, were in many cases different to previous years reflecting the decisions that needed to be made at the time. This has made it difficult to draw direct comparisons to previous years.

Table 2 - Cases received at stages 1 (local resolution)

Stage 1	Adults Social Care and Health	Children Young People and Education	Growth Environment and Transport	Strategic and Corporate Services (including Public Health)	Total
2021/22	744	1049	3238	179	5210
2020/21	754	867	3585	169	5375
Difference	-10	182	-347	10	-165
% difference	-1%	21%	-10%	6%	-3%

- 3.6 There were a number of changes to the way in which services were delivered in this year. This included changes to transport provision in SEN which will be reflected in Growth, Environment and Transport (GET) figures.
- 3.7 Adult Social Care and Health (ASCH), saw a slight decrease on the previous year.
- 3.8 Whilst Children, Young People and Education (CYPE) saw a significant increase in complaints overall. The majority of the increase in cases here can be attributed to Special Educational Needs (SEN).
- 3.9 All directorates bar Strategic and Corporate Services (SCS) the increase in SCS is largely attributed to Public Health. This service was responsible for the Council's response to Covid with regards to operating asymptomatic testing sites, applying National Government guidance locally including communications and in some cases enforcement.
- 3.10 Overall we have seen a 3% decrease in the number of complaints received at stage one. A breakdown of complaints received by division/service can be found in Appendix A.

Table 3 – Feedback received at Stage 2 compared with the previous year

Stage 2	Adult Social Care and Health	Children, Young People and Education	Growth, Environment and Transport	Strategic and Corporate Services
2021/22	0	140	145	15
2020/21	1**	125	150	23
Difference	-1	15	5	8
% difference		12%	-3%	-35%

*ASCH operate a 2-stage process with the Local Government Ombudsman acting as the second stage

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**Complaint that was handled under corporate complaints process and not under ASCH process

3.11 We have seen a significant decrease in complaints escalating to stage 2 within all Directorates bar CYPE, the majority of the escalations were in SEN where response times to customers have been particularly challenging this year. Where there are delays in responding to stage one complaints, there is usually an increase in complaints escalating to stage 2.

3.12 Cases closed by Directorate at Stage 1

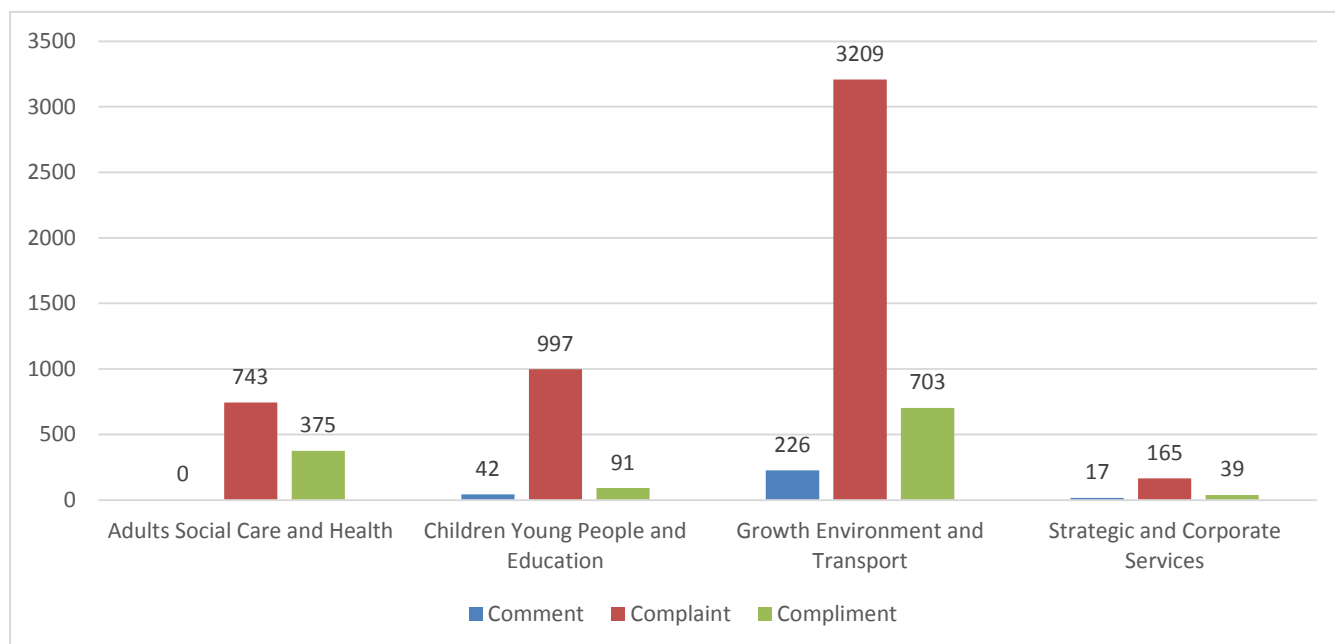
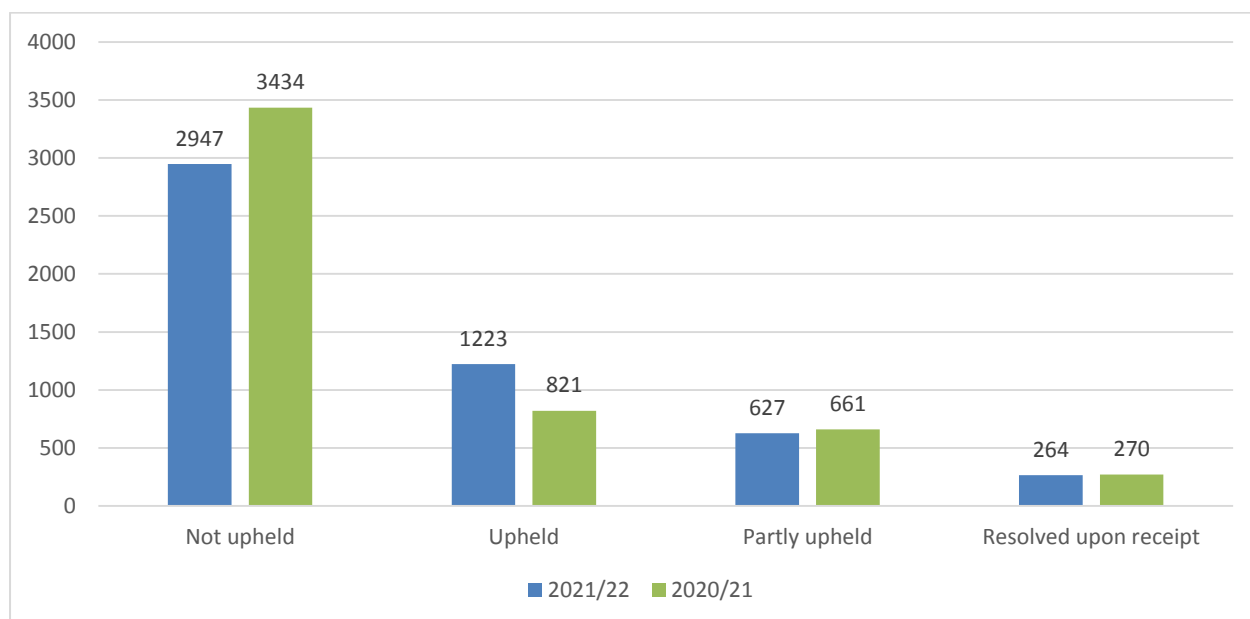


Table 4 - Cases closed by Directorate at Stage 1

	Comment	Complaint	Compliment	Total
Adults Social Care and Health	0*	743	375	1118
Children Young People and Education	42	997	91	1130
Growth Environment and Transport	226	3209	703	4138
Strategic and Corporate Services	17	165	39	221
Total for 2021/22	285	5114	1208	6607
Total for 2020/21	569	5250	1391	6968
Difference	-284	-136	-183	-361
% Difference	-50%	-3%	-13%	-5%

*ASCH log informal concerns and feedback of this nature under other categories

3.13 Case outcomes at Stage 1*



*Number of cases closed will not equal the number received

Table 5 – Stage one - cases not upheld, upheld, partly upheld and resolved upon receipt

Stage 1	Not upheld	Upheld	Partly upheld	Resolved upon receipt
2021/22	2947	1223	627	264
%	59%	24%	12%	5%
2020/21	3434	821	661	270
%	66%	16%	13%	5%

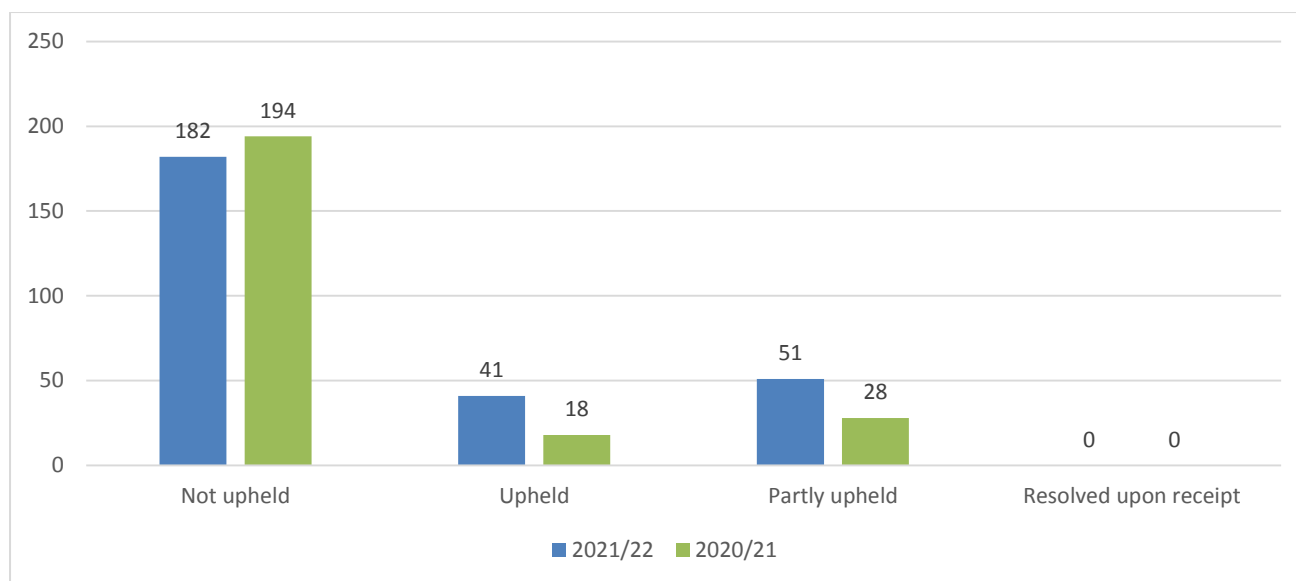
3.14 24% of cases were upheld this year, compared with 16% in 2020-21. We are starting to see outcomes returning to pre-pandemic levels in 2019-20 30% of complaints were upheld in 2019/20.

3.15 An example of a not upheld and partially upheld case.

In the previous year customers disagreed with the booking centres at Household Recycling and Waste sites. As this is a policy decision taken in light of the restrictions this would have been not upheld.

Partially upheld cases will be where some elements of the complaint were not upheld, as in the example above but other elements, for example if they had cause to complaint about staff behaviour and this was found to be upheld, then this would cause the overall complaint to be partially upheld.

3.16 Case outcomes at Stage 2*



*Number of cases closed will not equal the number received

Table 6 – Stage two – Not upheld, upheld, partly upheld, resolved upon receipt

Stage 2	Not upheld	Upheld	Partly upheld	Resolved upon receipt
2021/22	182	41	51	0
%	66%	15%	19%	0%
2020/21	194	18	28	0
%	81%	8%	12%	0%

3.17 15% of cases were upheld this year compared with 8% the previous year at stage two. There is also an increase in the number of those partly upheld, where there are some areas of fault identified on the Council in the complaints raised but not in all the issues raised.

3.18 Table 7 below tracks the other types of feedback received by the Council including Member and MP enquiries and informal concerns compared with the previous year. Enquiries include Ask a Kent Librarian service requests which account for a significant proportion of the volumes received below.

Table 7 – Volumes received for other types of feedback.

	Member/MP enquiry	Enquiry (includes Ask a Kent Librarian)	Informal Concerns	Representation
2021/22	1682	13364	208	10
2020/21	1216	16708	242	3
Difference	466	-3344	-34	7
%	38%	-20%	-14%	

3.19 The increase in Member/MP enquiries is closer to expected volumes, following the decrease last year when work was carried out to ensure that Member Enquiries, where the source is from an MP or a Council Member, are logged appropriately.

3.20 There were some additional topics that caused an increase in residents reaching out to their Members these included the Boxing Day Hunt, Public Transport, including changes to bus routes, cost increase for bus passes and SEN Transport and SEN in general

3.21 A representation is a procedure for cases where a complainant wishes to complain about something eligible for progression through the statutory Children Act complaints procedure, but there is something else in progress which prevents them from having it accepted. This would include a Section 47 child protection enquiries, legal proceedings, a Child and Family Assessment, Tribunal, disciplinary etc.

Table 8 - Reasons for complaints this year

Year	Break-down	Communications or Information	Equalities & regulatory	Not for KCC	Policy and procedure	Service failure	Service Quality	Staff Conduct cause	Value for money	Impact of major incident	Issues with service	Total
21-22	Total	900	239	81	1191	13	7	282	42	63	2667	5485
	% of total complaints	16%	4%	1%	22%	<1%	<1%	5%	1%	1%	49%	
20-21	Total	785	265	92	1392	51	25	285	97	283	2079	5354
	% of total complaints	15%	5%	2%	26%	1%	>1%	5%	2%	5%	39%	

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*Some cases will have more than one reason for the complaint

- 3.21 During the pandemic it was also decided that a new category ‘impact of major incident’ should be added, the volume of these complaints has significantly decreased. We would expect these types complaints to decrease over the coming year.
- 3.22 The biggest topic was ‘issues with service’ which accounted for 49% of cases. Table 10 shows the breakdown of the root causes of these complaints where they were upheld. To provide greater clarity in next years report, this category has now been split into ‘Quality of Service’ and ‘Service not Provided’.

KCC Annual Customer Feedback Report 2021/22

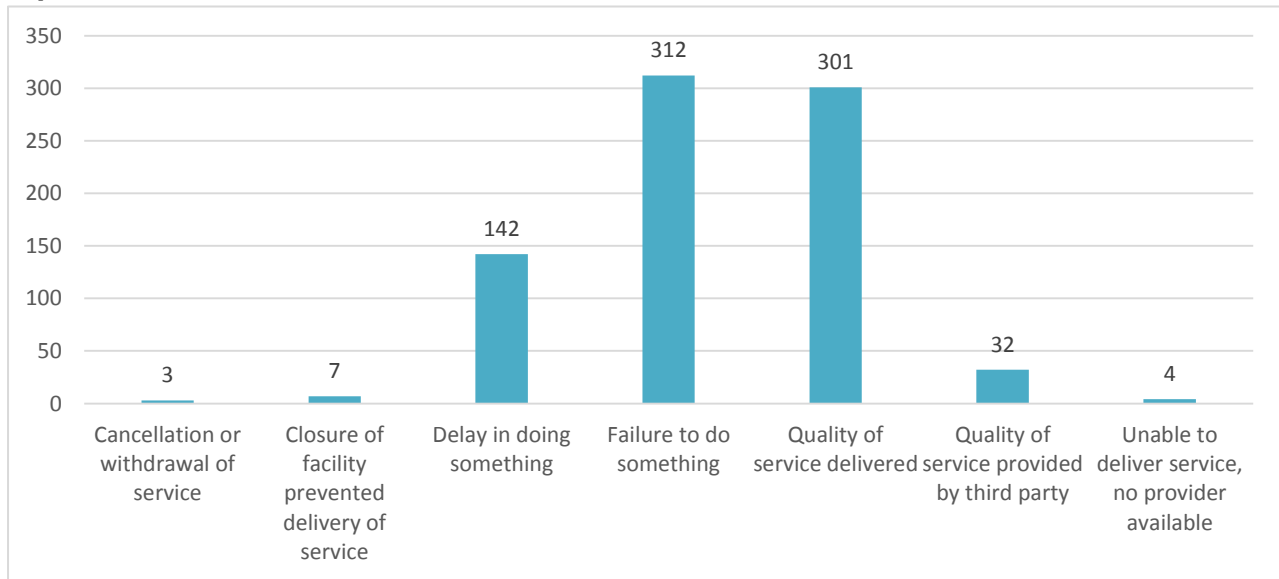
Table 9 – Breakdown of reasons for upheld* complaints by Directorate Stage one and two**

Complaint reason	Adults Social Care Services & Health	Children Young People & Education	Growth Environment & Transport	Strategic & Corporate Services	Total	%
Communications or Information	48	99	88	31	266	20%
Equalities & regulatory	4	13	16	4	37	3%
Policy and procedure	48	21	80	1	150	11%
Staff Conduct cause	6	7	38	10	61	5%
Impact of major incident	0	0	16	0	16	1%
Issues with service	73	207	492	20	792	60%
Total	179	347	730	66	1322	
%	14%	26%	55%	5%		

*table only includes upheld complaints and not those partially upheld

**some complaints will have multiple reasons as to why they were upheld

Table 10 – Breakdown of ‘Issues with Service’ category where complaint was ‘upheld’



	Adults Social Care Services and Health	Children Young People and Education	Growth Environment and Transport	Strategic and Corporate Services	Total	% of total
Cancellation or withdrawal of service	2	0	1	0	3	<1%
Closure of facility prevented delivery of service	2	0	5	0	7	1%
Delay in doing something	13	105	20	4	142	18%
Failure to do something	27	72	202	11	312	39%
Quality of service delivered	9	43	246	3	301	38%
Quality of service provided by third party	18	2	11	1	32	4%
Unable to deliver service, no provider available	3	0	1	0	4	<1%
Total	74	222	486	19	801	
% of total	9	28	61	2		

**some complaints will have multiple reasons as to why they were upheld

Of those upheld under the category 'Issues with Service'

- Adult Social care reasons cited were delays in carrying out an assessment. Financial/Needs/Carer, or that services were not provided or provided late.
- Children, Young People and Education reasons include delays including in receiving Education, Health and Care Plans (EHCP) and eligibility for home to school transport.
- In Growth, Environment and Education reasons for complaints included cleanliness and help at Household Waste and Recycling Centres and quality of repairs made to highways.

4. Compliance with standards

- 4.1 KCC is committed to acknowledging any complaints received within 3 working days and to provide the customer with a response within 20 working days. As a whole KCC **responded to 77%** of complaints within corporate timescales which compares to **82%** the previous year. The KPI for complaints responses is 85%.
- 4.2 This year services struggled with meeting deadlines for handling complaints within timescales. Staff have been reminded of the importance of keeping customers up to date and of meeting timescales. Performance has been challenging with staff and services still dealing with the impact of Covid on service delivery, change in customer habits/behaviours and the return to business as usual.
- 4.3 This year, **13%** of the total number of complaints received, were not responded to within timescale as a result of either staff availability or workload. This is a significant increase on the 2020/21, when this figure equated to **7%** of the total number of complaints received.

Table 11 - Delay reasons

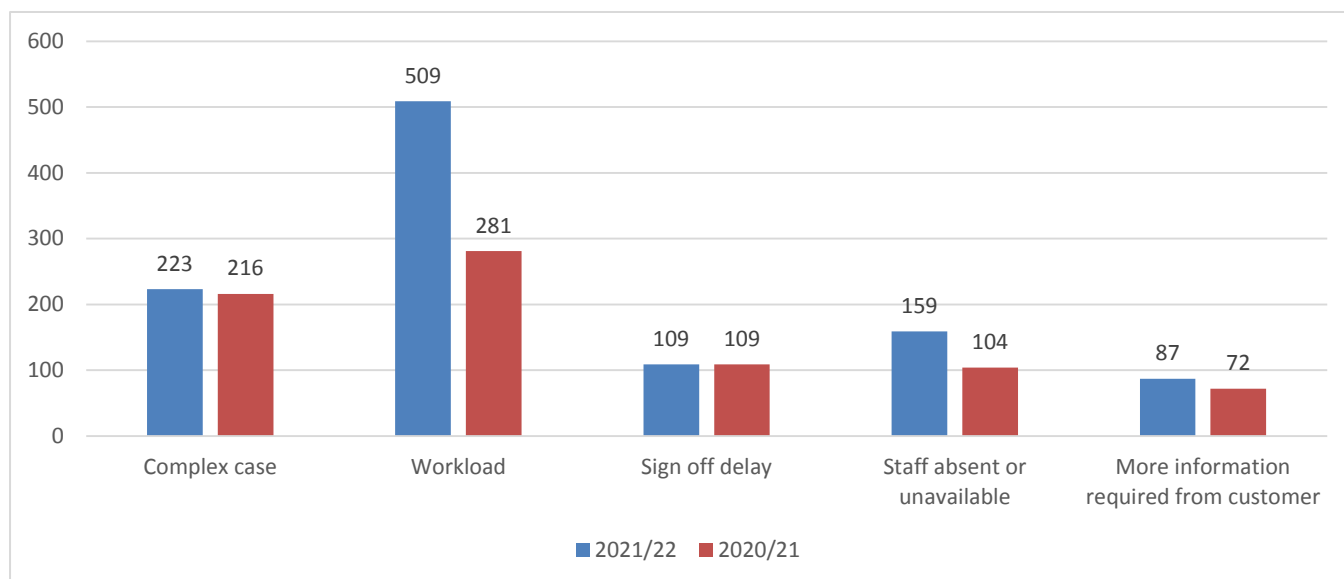


Table 12 - Top five overall delay reasons

	Complex case	Workload	Sign off delay	Staff absent or unavailable	More information required from customer
2021/22	223	509	109	159	87
2020/21	216	281	109	104	72
% of total complaints rec'd	4%	10%	2%	3%	2%

4.4 The above table shows the overall delay reason cited alongside the percentage of complaints that represents the number of total complaints received. Workload is the most cited reason.

4.5 In Adult Social Care, complex case is the primary reason for delay against KCC timescales. The complaints team has worked closely with the services within ASCH, to improve performance significantly over the last year and therefore there is now a reduction in the number of cases that cite a delay.

4.6 The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 makes provision for customers and the complaints team to set the timescales for responding. This can be up to 6 months for the most complex

of cases, and means that complaints will often not meet the 20 working day KCC standard. This is because an agreement with the customer has been formed to allow for more time to investigate and respond.

- 4.7 In addition, Mental Health complaints have an agreed 30 working day response time when requiring a joint response from Kent and Medway Partnership Trust. This is reviewed regularly.
- 4.8 Within CYPE this year, there has been a significant increase in workload cited as a reason for those delays. This is particularly evident in areas already under significant pressure such as SEN, where 200 of the 347 cases closed were recorded as late due to workload. The impact of the Ofsted report continues to be felt and a continual increase in referrals to the service, means that complaint responses are often delayed due to ongoing work pressures.
- 4.9 In GET, there was a significant increase in workload and complex cases being cited as the reason for delay. This is partly due to the recommissioning of SEN Transport and with services such as Drainge and Soft Landscapes which were impacted by seasonal demand on the services.

Table 13 - Top three delay reasons by directorate

Adults Social Care and Health

	Complex case	Sign off delay	More information required from customer
2021/22	55	38	35
2020/21	147	36	18
% of total complaints rec'd by Directorate	7	5	5

Children Young People and Education

	Workload	Sign off delay	Complex case
2021/22	241	63	56
2020/21	136	39	40
% of total complaints rec'd by Directorate	23	6	5

Growth Environment and Transport

	Workload	Staff absent or unavailable	Complex Case
2021/22	226	120	109
2020/21	96	74	29
% of total complaints rec'd by Directorate	7	4	3

Strategic and Corporate Services

	Workload	Complex Case	Internal information or records missing
2021/22	9	3	3
2020/21	8	4	2
% of total complaints rec'd by Directorate	5	2	2

5. Customer communications channels

- 5.1 Information on 'How to complain' is available on our website and on our Complaints, Comments and Compliments leaflets. The public can provide feedback to the Council through a number of different channels including via our online form, phone, email and through Social Media.
- 5.2 The breakdown below indicates by percentage which channel customers have chosen to communicate feedback (compliments, comments & complaints) during 2020/2021 & 2021/2022.

Table 14 - Channels used to communicate compliments, comments, informal concerns and complaints

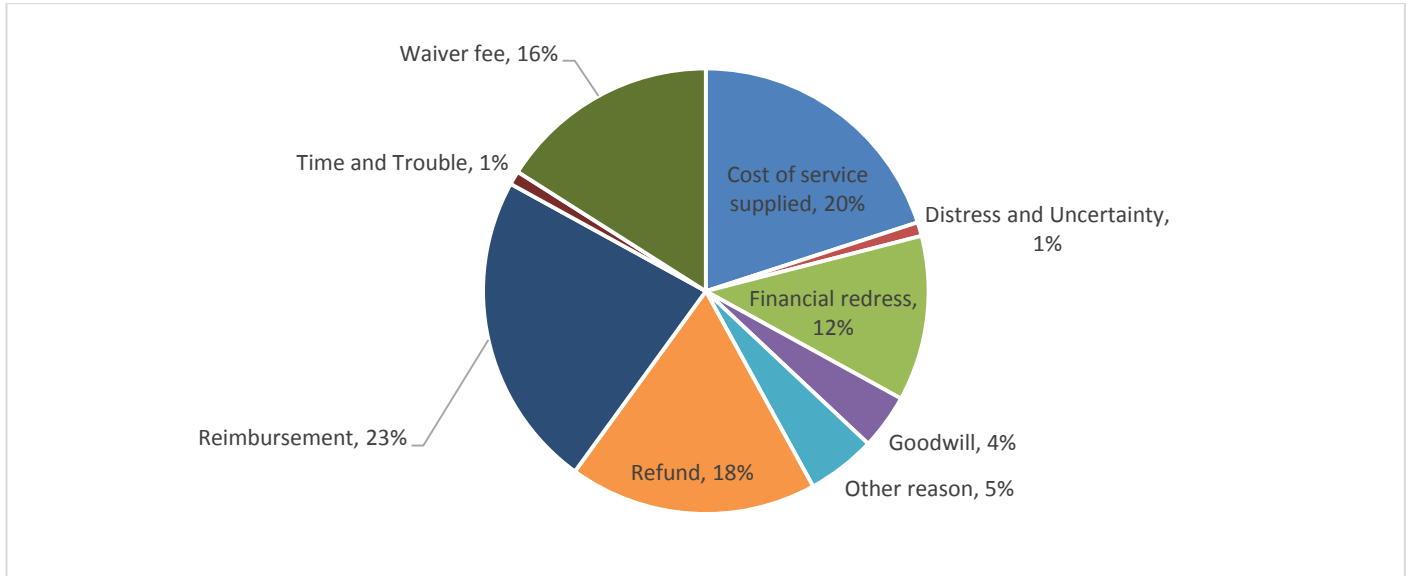
	Phone	Letter	Email	Comment card/ Face to Face	Online	Contact via Corporate Director, Member or MP	Other
2021/2022	17%	3%	35%	2%	44%	<1%	<1%
Volume	1160	189	2381	108	2992	11	14
2020/2021	16%	2%	32%	1%	49%	<1%	<1%
Volume	1154	154	2316	78	3546	29	13

- 5.3 The above table shows that there has been a slight decrease in the submitting of compliments, comments and complaints via our online systems. This was perhaps driven by necessity during Covid but it is likely that some customers may revert back to methods they are more comfortable with.
- 5.4 Nonetheless there is a significant proportion of complaints now being submitted via digital methods. 79% of feedback received is now arriving digitally either by email, through social media or via the online form.

6. Compensation across all complaints received by KCC

- 6.1 In 2021/22, £245,410.82 was paid in compensation, settlements, changes to the amount we charge and waived charges as a result of complaints to the organisation this includes;
- £147,136.98 has been paid or waived as part of local resolution in Adult Social Care and Health. This figure also includes the adjustments to the cost of care provided. The service has adapted their processes to ensure that this information is consistently calculated and recorded as part of the complaint outcome.
 - £748.70 has been paid out for Growth, Environment and Transport.
 - £28,998 has been paid out for Children, Young People and Education Directorate including Community Learning and Skills and Children Social Work Services
 - £68,527.14 additional payments were made following Local Government and Social Care Ombudsman Decisions found against KCC.
- 6.2 This is an increase of £180,444.77 from 2020/21 when £64,966.05 was paid out in settlements or through waived charges.

Table 15 - Compensation complaint reason chart



6.3 It is important to note that monies paid out during the 2021/22 financial year may relate to complaints recorded in previous years. This is due to the time that elapses between the date the complaint was lodged and achieving resolution. This is particularly true of Ombudsman complaints.

7 Levels of complaints to the standards committee (Member complaints)

Complaints recorded in 2021/22

7.1 During 2020/21 the Monitoring Officer has responded to 9 complaints of alleged misconduct of the breach of the Elected Member Code of Conduct.

Table 16

Number of Complaints			Outcome
2021/22	2020/21	2019/20	
9	8	8	No Action or resolved upon receipt. Dismissed by the Monitoring Officer
0	0	0	Action taken by party

8 The Local Government and Social Care Ombudsman complaints review 2021/22

Overview of Ombudsman

- 8.1 In cases where a customer is unhappy with the responses received about their complaint from the Council they can exercise their right to involve the Local Government and Social Care Ombudsman (LGSCO). The Ombudsman will investigate cases where a customer has exhausted the Council's own complaints policy and feel that their case has not been appropriately heard or resolved.
- 8.2 Each year, in July, the Ombudsman issues an annual review to each local authority. In his letter he sets out the number of complaints about the authority that his office has dealt with and offers a summary of statistics to accompany this.
- 8.3 The annual review statistics are publically available, allowing councils to compare their performance on complaints against their peers; copies of the Annual Review letter as well as any published Ombudsman complaints are issued to the Leader of the Council and Chief Executive to encourage more democratic scrutiny of local complaint handling and local accountability of public services.
- 8.4 Decision statements made are published on the Ombudsman's website six weeks after the date of the final decision. The information published will not name the complainant or any individual involved with the complaint. Cases in which the complainant, despite redaction of names, can be easily identified are not published.

9 KCC Performance – Ombudsman complaints

- 9.1 It should be noted that there will be discrepancies between the volume recorded by the Ombudsman and the authority. This is due to the Ombudsman recording complaints that it does not progress to Kent County Council, as it is able to resolve the issue at first point of contact, either through referring the customer to the Council or it is identified as out of jurisdiction.
- 9.2 During 2021/22 KCC received a total of **182** decisions from the Ombudsman this included 10 referred back for local resolution. The full letter and Ombudsman statistics can be found in Appendix B.
- 9.3 The level of complaints received by KCC for the size of population, volume of services and interaction is low. Each complaint provides an opportunity to learn from our customers and improve our systems and we need to focus on those complaints that are upheld to ensure that lessons are learned.
- 9.4 The Ombudsman's report noted that the national average upheld is **66%** of complaints they investigated; this is down nationally from 71% last year.

- 9.5 The average upheld rate for other County Councils remained at 71%, the same as the previous year. Kent County Council's average is **68%**; this was a decrease from last year's 74% upheld
- 9.6 In **15%** of upheld cases the Council had provided a satisfactory remedy before the complaint reached the Ombudsman. This compares to an average of 8% in similar authorities.
- 9.7 It is also worth noting that the number of KCC cases the Ombudsman investigated and upheld in Adult Social Care and Health is lower than the national, where 69% are nationally upheld, compared with **58%** in Kent.

10. Public Report

- 10.1 The Council received one public report in 2021/22. Public reports are released by the Ombudsman where they believe that there is an issue that has significant public interest and that the learning from that issue could be applied to other authorities.

Complaint

Mr C complained there was fault in Kent County Council's (the Council's) decision to place his late partner Ms D in a care home. He complained about:

- inadequate arrangements in a best interests' meeting and a lack of consultation before placing Ms D in the care home;
- the appointment of an Independent Mental Capacity Advocate;
- a standard authorisation to deprive Ms D of her liberty; and
- the failure to apply to court. Mr C said the Council's actions caused him and Ms D distress as it meant they could not live together.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council should apologise to Mr C and pay him £500 to reflect his avoidable distress. It should also, within timescales set out later in this report:

- ensure all current and future requests for standard authorisations are completed within prescribed timescales, including low and medium risk cases currently held as pending;
- provide us with written evidence showing it has monitored all requests for standard authorisations post-dating our final report and completed them within the legal timeframes described in this report;

- review its Care Act assessment processes to ensure case managers document consideration of Article 8 rights when making decisions about care placements which separate couples;
- ensure relevant case managers receive training on the Human Rights Act 1998 and how it may apply to their role;
- review all cases from January 2019 to date where Deprivation of Liberty Safeguards assessments have not been completed at all or not been completed within the prescribed timescales and consider whether any injustice has arisen because of the delay. If so, the Council should take action to remedy any injustice in line with the principles set out in our published Guidance on Remedies. We can advise the Council on individual cases if needed. Before starting the review, the Council should provide us with an action plan of how it intends to conduct the review. The action plan should set out numbers, methodology and scope and should be agreed with us before the Council starts the review;
- provide us with a written summary of the cases it has reviewed and what, if any action, it took as a result of the reviews.

The full report – Can be accessed at the following link -

<https://www.lgo.org.uk/decisions/adult-care-services/assessment-and-care-plan/19-015-406>

Lessons Learned – the report was heard at the Adult Social Care Cabinet Committee on the 29th September 2021. (Item 20) For more information about the service's response to the report please visit

<https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=896&MId=8815&Ver=4>

11 Local authority report – Kent County Council

11.1 For further information on interpretation of statistics click on this link to go to <http://www.lgo.org.uk/information-centre/reports/annual-review-reports/interpreting-local-authority-statistics>

Complaints and enquiries received

11.2 The following table examines the number of complaints received by the Ombudsman over the last three years against the LGSCO's service categories.

Table 17

	Adult care Services	Benefits and Tax	Corporate and other services	Education and children's services	Environmental services	Highways and transport	Housing	Planning and Development	Other	Total
2021/22	55	0	3	96	7	20	0	1	0	182
2020/21	56	0	4	79	5	9	1	1	1	156
2019/20	66	0	8	112	3	23	0	4	2	218

Decisions made

11.3 The following table examines the number of complaints decided by the Ombudsman over the last three years and decision category given by the LGSCO.

Table 18 – LGSCO complaint decisions

	<u>Detailed investigation carried out</u>		Advice given	Closed after initial enquiries	Incomplete / Invalid	Referred back for local resolution	Total
	Upheld	Not upheld					
2021/22	65	30	0	75	2	10	182
2020/21	40	14	0	49	9	40	152
2019/20	39	27	2	69	14	61	212

11.4 The number of complaints heard at Ombudsman level reduced in 2020/21, however this is an anomaly as the Ombudsman did not investigate any new complaints during the first three months of the financial year due to Covid.

12 Ombudsman Complaints – Themes and Outcomes

12.1 The following section examines some cases that were investigated by the Ombudsman. The complaint and the subsequent decisions are taken from the Ombudsman's website where all decisions (in which the complainant cannot be identified) are published.

Table 19 - Children, Young People and Education

	Upheld	Not upheld	Closed: out of jurisdiction/ no further action or withdrawn	Premature	Total
Children Social Work Services	12	3	25	2	42
Kent Test/ School Admission appeals	1	4	5	0	10
Home to School Transport/ Free School Meals	3	4	4	1	12
Special Educational Needs	20	1	4	6	31
The Education People	0	0	1	0	1
Community Learning and Skills	0	0	0	0	0
Total	36	12	39	9	96

Children Social Care - Not upheld example – 21 001 676**Complaint**

Ms B complains that the Council has failed to take action to support her relationship with her daughter, C, and has failed to act in C's best interests as a result of which she is currently living with her father.

Outcome:

Summary: Ms B complained that the Council failed to take action to support her relationship with her daughter, C, failed to act in C's best interests as a result of which she is currently living with her father. The Ombudsman found no fault on the Council's part

Children Social Care - Upheld example – 21 010 429**Complaint**

The complainant, who I refer to as Mrs X, says that when carrying out an EHC assessment for her daughter, referred to as A, the Council failed to:

- Comply with statutory timescales for preparing Educational Psychology (EP) advice;
- Consider her request to replace an EP assessment with the less formal consultation;
- Provide in a timely manner a funding agreement for A's Communication Support Worker (CSW) and involved Health in the funding discussions;
- Arrange support from the CSW within required timescales; and
- Have a regular and meaningful communication with Mrs X.

Mrs X considers the Council's failings resulted in the lack of sufficient support for A at the critical stage of her development.

Mrs X complains about the way the Council handled her complaint.

Outcome

Mrs X complained about delays with assessments and issuing a final Education Health and Care Plan (EHCP) for her daughter. She said the delays had detrimental effect on her daughter's progress especially in view of her age and the nature of her special educational needs. We find the Council at fault for the delay in completing the EHCP and delivering special educational provisions to Mrs X's daughter. We also find fault in the way the Council communicated with Mrs X and how it handled the complaint. The Council accepted our recommendations.

Education - Not upheld example – 21 002 304

Complaint:

Mrs X complains about an unsuccessful school appeal for her daughter, Y. She says the appeal panel overlooked evidence of Y's academic ability. She is also unhappy the appeal was decided on written submissions only and she did not have an opportunity to present her case. She would like the panel to reconsider its decision.

Outcome

We did not uphold Mrs X's complaint about an unsuccessful school appeal for her daughter. There was no fault in the Council's decision to hold appeals based on written submissions and the appeal panel took account of the evidence Mrs X provided.

Education - Upheld example – 21 004 769

Complaint

Mrs X asked the Council to provide her daughter (Y) with transport to the secondary school she will attend from September 2021 (School Z). Y has special educational needs set out in an Education Health and Care (EHC) Plan. The Council originally refused Mrs X's request because School Z is not the closest school to her home.

Outcome

We will not investigate this complaint about the Council's decision not to provide Mrs X's daughter with free transport to school. This is because the Council has now agreed to Mrs X's request and an investigation could not achieve anything more.

Table 20 - Growth, Environment and Transport

	Upheld	Not upheld	Closed: out of jurisdiction/no further action or withdrawn	Premature	Total
Environment, Planning and Enforcement	3	0	5	0	8
Highways, Transportation and Waste	4	1	15	0	20
Total	7	1	20	0	28

Not Upheld example – 21 001 678**Complaint:**

The complainant, I shall refer to as Mr X, represents a group of HGV drivers. Mr X complained the Council failed to properly consider the impact on and concerns of HGV drivers when it introduced an Experimental Traffic Regulation Order (the Order) in January 2021. This created parking controls limiting the use of lay-bys and other associated parking areas. Mr X says this led to a lack of approved parking areas resulting in drivers receiving fines.

Mr X wanted the Council to revoke the Order and return to the parking controls previously in place in 2020. The Order expired in June 2021.

Outcome

The complainant, Mr X, complained the Council failed to properly consult with HGV drivers and consider the likely impact on them of parking controls imposed under an Experimental Traffic Regulation Order. The Council said it followed the correct procedure, gained the necessary approval from the Secretary of State for Transport, and remedied a case where a penalty charge notice had been issued in error. We found the Council acted without fault.

Upheld example – 21 008 142**Complaint:**

Mr X complains there were failings in the way the Council responded to and dealt with his reports of flooding at his property during heavy rainfall due to a blocked road drain near to his home. Mr X says he was reporting urgent flooding at this property but was told there would be a five or seven day wait for a response to his concerns. Mr X says the Council's delays in dealing with the issue resulted in flooding to his driveway, garden and outbuilding and caused him inconvenience and time and trouble in pursuing the matter.

Mr X wants the Council to clear out the drain, install a gulley near his property and repair damage to the road caused by the flood water.

Outcome

Mr X complains about the way the Council responded to and dealt with his reports of flooding at his property caused by a blocked drain near to his home. We found no evidence of fault in the way the Council responded to Mr X's concerns about the blocked drain. We found fault as the Council delayed in responding to Mr X's request for the Council to install a road gulley near to his property. The Council has already apologised to Mr X for the delay which is a suitable remedy in this case. So, we have completed our investigation.

Table 21 - Strategic and Corporate Services

Upheld	Not upheld	Closed: out of jurisdiction/no further action or withdrawn	Premature	Total
0	0	2	1	3

Table 22 - Adult Social Care and Health

Upheld	Not upheld	Closed: out of jurisdiction/no further action or withdrawn	Premature	Total
22	16	14	3	55

Not Upheld example – 21 006 335

Complaint:

The complainant, whom I shall refer to as Mr D, complained the Council's social worker:

- failed to provide enough care support and progress his case for supported accommodation;
- failed to communicate properly and keep him informed about changes in his case; and
- wrongly involved his mother in his case which caused a conflict of interest and sharing of personal information.

As a result, Mr D said he experienced distress and uncertainty.

Outcome

Mr D complained the Council's Social Worker communicated poorly with him and failed to progress his housing application. As a result, he said he experienced distress and uncertainty. We found no fault in how the Council handled Mr D's care support, nor his application for supported accommodation. It reached decisions it was entitled to make, so we cannot criticise the merits of its decisions.

Upheld example – 21 008 339

Complaint:

Mr Y complains on behalf of his father, Mr X, that the Council decided not to disregard Mr X's property from its financial assessment when calculating his care costs. As a result Mr Y says his mother believed she could lose her home and he was uncertain whether Mr X's care costs had been calculated correctly.

Outcome

The Council was at fault for the way it decided not to disregard Mr X's property when calculating his care costs. This means Mr X's family cannot be sure his care costs are correct and whether entering into a deferred payment agreement with the Council is necessary. To remedy the injustice caused the Council has agreed to apologise and re-consider whether Mr X qualifies for a property disregard.

13 LESSONS LEARNED

13.1 Where the Ombudsman has made a decision against the Council, steps are taken by officers in the service to ensure that any lessons learned are applied across the service to improve the customer experience and avoid any further complaints of a similar nature.

13.2 With regards to lessons learned across the Council, the following table shows a list of actions that have been recorded where they exceed 100 complaints.

Table 23 - Top remedy actions

Action taken	Stage 1
Arrange staff training or guidance	215
Change or review communications	149
Discuss at team meeting	253
Explanation	352
Formal apology	498
Provided service requested	364

13.3 Other actions taken include changing or reviewing services, a financial remedy and changing or reviewing policies or procedures.

13.4 We are seeing a greater emphasis on sharing the learning within Directorates with more training now available either on Delta or through bespoke sessions such as those delivered for CYPE.

14 RECOMMENDATIONS

14.1 The Committee is asked to note the contents of this report for assurance.

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Appendix A – Directorate overview of Customer Feedback Received

Children, Young People and Education

All Feedback Reported

	Complaints (Stage One)	Comments	Compliments	Resolved Local Government and Social Care Ombudsman enquiries & complaints*
2021/22	1049	42	91	96
2020/21	867	51	77	78
2019/20	1,044	43	113	75

The below table compares the number of complaints received in 2021/22 with those received in 2019/20 and 2020/21

Service	2019/20	2020/21	2021/22
Specialist Children Service/Children’s Social Work Services	592	698	825
Community Learning & Skills (was Adult Education)	77	24	46
Education Services	351	143	176
The Education People	24	2	2
Total Complaints	1044	867	1049

Growth, Environment and Transport

All Feedback Reported

	Complaints (Stage one)	Comments	Compliments	Resolved Local Government and Social Care Ombudsman enquiries & complaints*
2021/22	3238	226	703	28
2020/21	3585	252	750	15
2019/20	3611	361	664	20

The below table compares the number of complaints received in 2021/22 with those received in 2019/20 and 2020/21

Service	2019/20	2020/21	2021/22
Environment, Planning and Enforcement	133	242	172
Economic Development	5	1	4
Highways and Transportation and Waste Management	3147	3106	2791
Libraries, Registrations and Archives	326	236	271
Total Complaints	3611	3585	3238

KCC Annual Customer Feedback Report 2021/22

Adult Social Care and Health

All Feedback Reported

	Complaints (Stage One)	Comments	Compliments	Resolved Local Government and Social Care Ombudsman enquiries & complaints*
2021/22	744	0	375	55
2020/21	754	252	512	53
2019/20	1092	65	518	46

The below table compares the number of complaints received in 2021/22 with those received in 2019/20 and 2020/21

Service	2019/20	2020/21	2021/22
Adult Social Care and Health	1092	754	744
Total Complaints	1092	754	744

KCC Annual Customer Feedback Report 2021/22

Strategic and Corporate Services

All Feedback Recorded

	Complaints (Stage One)	Comments	Compliments	Resolved Local Government and Social Care Ombudsman enquiries & complaints*
2021/22	179	17	39	3
2020/21	169	52	24	4
2019/20	119	10	22	6

The below table compares the number of complaints received in 2021/22 with those received in 2019/20 and 2020/21

Service	2019/20	2020/21	2021/22
Finance	30	28	39
FOI	4	3	13
Gateways and Contact Point	28	33	64
Insurance	2	1	0
Infrastructure, Property and Total Facilities Management	10	28	16
Public Health	-	59	34
Other	45	17	13
Total Complaints	119	169	179

Appendix B

Ombudsman Letter – see attachment

20 July 2022

By email

Mr Cockburn
Head of Paid Service
Kent County Council

Dear Mr Cockburn

Annual Review letter 2022

I write to you with your annual summary of complaint statistics from the Local Government and Social Care Ombudsman for the year ending 31 March 2022. The information offers valuable insight about your organisation's approach to complaints. As such, I have sought to share this letter with the Leader of your Council and Chair of the appropriate Scrutiny Committee, to encourage effective ownership and oversight of complaint outcomes, which offer such valuable opportunities to learn and improve.

Complaint statistics

Our statistics focus on three key areas that help to assess your organisation's commitment to putting things right when they go wrong:

Complaints upheld - We uphold complaints when we find fault in an organisation's actions, including where the organisation accepted fault before we investigated. We include the total number of investigations completed to provide important context for the statistic.

Compliance with recommendations - We recommend ways for organisations to put things right when faults have caused injustice and monitor their compliance with our recommendations. Failure to comply is rare and a compliance rate below 100% is a cause for concern.

Satisfactory remedy provided by the authority - In these cases, the organisation upheld the complaint and we agreed with how it offered to put things right. We encourage the early resolution of complaints and credit organisations that accept fault and find appropriate ways to put things right.

Finally, we compare the three key annual statistics for your organisation with similar authorities to provide an average marker of performance. We do this for County Councils, District Councils, Metropolitan Boroughs, Unitary Councils, and London Boroughs.

Your annual data, and a copy of this letter, will be uploaded to our interactive map, [Your council's performance](#), on 27 July 2022. This useful tool places all our data and information about councils in one place. You can find the detail of the decisions we have made about your

Council, read the public reports we have issued, and view the service improvements your Council has agreed to make as a result of our investigations, as well as previous annual review letters.

Your organisation's performance

This year, we issued a public report about your Council's failure to apply to the Court of Protection to resolve a dispute about placing a woman in a nursing home and failure to authorise a deprivation of the woman's liberty for a six-week period. We also found fault in the Council's system of prioritising Deprivation of Liberty (DOLS) applications and screening out 'low' and 'medium' priority cases. We recommended payments to the complainants, which the Council provided.

We also recommended a retrospective review of DOLS applications made since January 2019 and a review of the current DOLS service to ensure applications are completed within the required timescales. We noted the Council was not able to comply with these recommendations because of a shortage of best interests' assessors, advocates, and Section 12 doctors. We were satisfied the Council had considered our report properly, accepted our findings and presented rational reasons why it could not comply with some of the recommendations. However, we have advised that if we get similar complaints in future, we will take this context into account and consider whether to use our powers to look at wider, systematic failings county-wide through a root and branch investigation. We also informed the Council's Monitoring Officer, its external auditors and the Department for Levelling Up, Housing and Communities.

More generally, I am concerned about an apparent deterioration in the timeliness of your Council's responses to our investigation enquiries. There were 29 out of 68 occasions where we recorded receiving a late response and our records evidence several complicated interactions with your Council. We have had cases where the Council sought a one-month deadline extension, which is double the time we normally allow, and another where it cited staff shortages as a reason for a delayed response. There was a case where your Complaints Team admitted it had not actioned an enquiry letter we sent, one of three documented occasions where your Council failed to respond at all to our enquiries or pre-allocation enquiries. It appears a significant proportion of the delays we noted in the past year occurred on Children's Services complaints.

Delays such as these result in further avoidable distress to complainants and undermine public trust in the redress system. I ask the Council to reflect on its practices and take the necessary steps to improve its liaison with my office in the year ahead.

Supporting complaint and service improvement

I know your organisation, like ours, will have been through a period of adaptation as the restrictions imposed by the pandemic lifted. While some pre-pandemic practices returned, many new ways of working are here to stay. It is my continued view that complaint functions have been under-resourced in recent years, a trend only exacerbated by the challenges of the pandemic. Through the lens of this recent upheaval and adjustment, I urge you to consider how your organisation prioritises complaints, particularly in terms of capacity and visibility. Properly resourced complaint functions that are well-connected and valued by service areas, management teams and elected members are capable of providing valuable insight about an organisation's performance, detecting early warning signs of problems and offering opportunities to improve service delivery.

I want to support your organisation to harness the value of complaints and we continue to develop our programme of support. Significantly, we are working in partnership with the Housing Ombudsman Service to develop a joint complaint handling code. We are aiming to consolidate our approaches and therefore simplify guidance to enable organisations to provide an effective, quality response to each and every complaint. We will keep you informed as this work develops, and expect that, once launched, we will assess your compliance with the code during our investigations and report your performance via this letter.

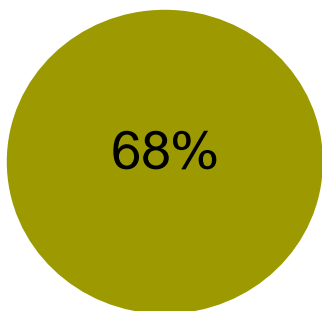
An already established tool we have for supporting improvements in local complaint handling is our successful training programme. We adapted our courses during the Covid-19 pandemic to an online format and successfully delivered 122 online workshops during the year, reaching more than 1,600 people. To find out more visit www.lgo.org.uk/training.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M King', with a long horizontal flourish extending to the right.

Michael King
Local Government and Social Care Ombudsman
Chair, Commission for Local Administration in England

Complaints upheld



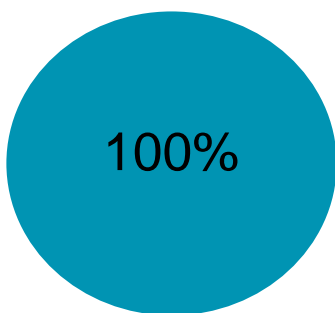
68% of complaints we investigated were upheld.

This compares to an average of **71%** in similar organisations.

65
upheld decisions

Statistics are based on a total of **95** investigations for the period between 1 April 2021 to 31 March 2022

Compliance with Ombudsman recommendations



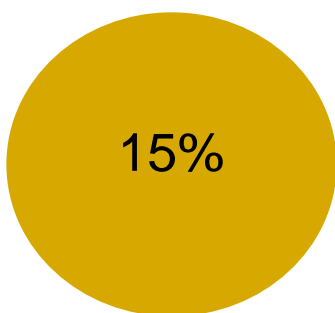
In **100%** of cases we were satisfied the organisation had successfully implemented our recommendations.

This compares to an average of **100%** in similar organisations.

Statistics are based on a total of **54** compliance outcomes for the period between 1 April 2021 to 31 March 2022

- Failure to comply with our recommendations is rare. An organisation with a compliance rate below 100% should scrutinise those complaints where it failed to comply and identify any learning.

Satisfactory remedy provided by the organisation



In **15%** of upheld cases we found the organisation had provided a satisfactory remedy before the complaint reached the Ombudsman.

This compares to an average of **8%** in similar organisations.

10
satisfactory remedy decisions

Statistics are based on a total of **65** upheld decisions for the period between 1 April 2021 to 31 March 2022

To: Governance & Audit Committee

From: Mike Hill, Cabinet Member, Community and Regulatory Services
Simon Jones, Corporate Director, Growth, Environment & Transport

Date: 15th November 2022

Subject: Report on use of covert investigative techniques surveillance, covert human intelligence source and telecommunications data requests carried out by KCC between 1 April 2021 – 31 March 2022

Classification: Unrestricted

FOR ASSURANCE

Summary This report outlines work undertaken by KCC Officers on surveillance, the use of covert human intelligence sources (CHIS) and access to telecommunications data governed by the Regulation of Investigatory Powers Act 2000 (RIPA) and Investigatory Powers Act (IPA) during the 2021/22 business year.

Recommendations Members are asked to note for assurance the use of covert investigative techniques during the period and endorse the policy in relation to the use of covert investigative techniques.

1. Background

- 1.1 The document sets out the extent of Kent County Council's use of covert surveillance, covert human intelligence sources and access to telecommunications data. The County Council wishes to be as open and transparent as possible, to keep Members and senior officers informed and to assure the public these powers are used only in a lawful, necessary and proportionate manner.
- 1.2 To achieve transparency and in accordance with the Codes of Practice, an annual report outlining the work carried out is submitted by the Senior Responsible Officer (SRO) to an appropriate Committee. The last report was submitted and approved by the Governance and Audit Committee on 30th November 2021.

2 What this report covers

- 2.1 Covert Surveillance – Surveillance which is intended to be carried out without the person knowing and in such a way that it is likely that private information may be obtained about a person (not necessarily the person under surveillance). Local authorities are only permitted to carry out certain types of covert surveillance and, for example, cannot carry out surveillance within or into private homes or vehicles (or similar “bugging” activity).

- 2.2 Covert Human Intelligence Source (CHIS) – the most common form is an officer developing a relationship with an individual without disclosing that it is being done on behalf of the County Council for the purpose of an investigation. In most cases this would be an officer acting as a potential customer and talking to a trader about the goods / services being offered for sale. Alternatively, a theoretical and rare occurrence would be the use of an ‘informant’ working on behalf of an officer of the Council. In such cases, due to the potential increased risks, KCC has agreed a memorandum of understanding with Kent Police.
- 2.3 Access to communications data – Local authorities can have access to data held by telecommunications providers. Most commonly this will be the details of the person or business who is the registered subscriber to a telephone number or social media account. Local authorities are not able to access the content of communications and so cannot “bug” telephones or read text messages.
- 2.4 In each of the above scenarios an officer is required to obtain authorisation before undertaking the activity. This decision is logged in detail, with the authorising officer considering the lawfulness, necessity and proportionality of the activity proposed and then completing an authorisation document.

After authorisation has been granted (if it is), in relation to surveillance and CHIS, the officer applies for judicial approval and attends a Magistrates’ Court to secure this.

For surveillance and CHIS the approval document is then held on a central file. There is one central file for KCC, held on behalf of the Corporate Director, Growth, Environment and Transport, which is available for inspection by the Investigatory Powers Commissioner (IPC). For telecommunications authorisations KCC uses the services of the National Anti-Fraud Network (NAFN) to manage applications and keep our records. Authorisation for communications data requests is now not carried out by KCC managers but, by law, is undertaken by the Office for Communications Data Authorisations. KCC managers are required only to confirm that officers are seeking authorisation in the course of their duties. Any inspection of this type of approval carried out by IPC is conducted at the offices of NAFN.

3 Covert authorisations carried out between 1 April 2021 – 31 March 2022

Total number of authorisations granted for 2021/22 (figure for 2020/21 in brackets):

Surveillance – 2 (0)

Covert human intelligence source (CHIS) – 1 (0)

Access to telecommunications data – 2 (4)

4. Purposes for which covert techniques used

The CHIS authorisation was used to permit a Trading Standards Officer to pose as a buyer of counterfeit goods in the course of investigating that crime. This case was concluded by the issuing of a “cease and desist” notice to the seller.

One surveillance authorisation was in relation to an operation focussed on the sale of age restricted goods to children. Of the nine premises visited, five made sales. These businesses have received formal written warnings about their conduct. Their future performance in this area is being monitored.

The other surveillance authorisation was in relation to an investigation into organised criminality linked to the sale of various illicit tobacco products. This investigation is ongoing.

One of the telecommunications data requests was in relation to a cross border investigation into fraud linked to the motor trade. This matter is currently before the courts.

The other telecommunications request was in relation to a cross border investigation into false environmental claims. This matter is currently under consideration by counsel in relation to the appropriateness of instigating legal proceedings.

A matter previously brought to The Committee’s attention related to the use of various covert techniques in relation to the investigation of illegal television streaming. Convictions in that matter have been secured and sentencing is awaited.

5. Reportable errors

These are errors which are required, by law, to be reported to the oversight commissioners for either surveillance or communications data requests. The errors can include those made by KCC or those made by third parties including communications data providers.

One reportable error occurred during this year. The error was that an inexperienced Trading Standards Officer used the camera on her mobile telephone to covertly capture images of a market stallholder selling what were believed to be counterfeit goods. The officer had not sought authorisation for this covert activity.

As soon as this action became known to the officer’s manager it was referred to the Head of Kent Scientific Services in his capacity as covert techniques coordinator. The Investigatory Powers Commissioner’s Office (IPCO) were notified on 23rd March, as required, and an internal investigation was carried out. The findings of that investigation were shared with IPCO who responded on 14th April 2022. Their response is attached to this report as appendix 1.

6. KCC Policy

The statutory codes of practice which cover public authority use of covert investigative techniques require that the elected members of a local authority should review the authority's use of these techniques and set policy at least once per year.

Appendix 2 to this report is KCC's policy.

No changes have been made to this policy since it was last brought to this committee.

7. Recommendations

Members are asked to note for assurance the use of covert investigative techniques during the period and endorse the policy in relation to the use of covert investigative techniques.

Contact Officer

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Kent County Council

Policy in relation to the use of covert investigative techniques

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1. Introduction

This policy document is based on the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA) as amended, The Protection of Freedoms Act 2012, The Investigatory Powers Act 2016 and the Home Office's Codes of Practice for Directed Surveillance, Covert Human Intelligence Sources (CHIS) and Acquisition and Disclosure of Communications data.

Links to the above documents can be found at:

<http://www.legislation.gov.uk/ukpga/2000/23/contents>

<http://www.legislation.gov.uk/ukpga/2012/9/contents>

<http://www.legislation.gov.uk/ukpga/2016/25/contents>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742041/201800802_CSPI_code.pdf

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742042/201800802_CHIS_code_.pdf

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822817/Communications_Data_Code_of_Practice.pdf

- 1.1 Surveillance plays a necessary part in modern life and law enforcement. It is used not just in the targeting of criminals, but also as a means of preventing crime and disorder. The Regulation of Investigatory Powers Act 2000 (RIPA) introduced a system of authorisation and monitoring of activities, to ensure that the rights of the individual were not unnecessarily compromised, in the pursuance of regulatory compliance. The Protection of Freedoms Act and Investigatory Powers Act have refined the system introduced by RIPA.
- 1.2 Within the County Council, Trading Standards Officers may need to covertly observe and then visit a shop, business premises, website, social media page or to follow a vehicle or individual as part of their enforcement functions. During a visit or a test purchase situation it may be necessary to covertly video record a transaction, as it takes place. Environmental crime enforcement staff may also need to observe or record at places where illegal tipping or other similar crimes take place and access communications data when investigating such crimes. Similarly, KCC's Internal Audit fraud investigators may need to carry out covert surveillance or acquire communications data when they are investigating a crime which they intend to prosecute using the criminal law. They need to use covert surveillance techniques as part of their official duties.
- 1.3 Only those officers designated as "authorising officers" from the specified units or services are permitted to authorise the use of techniques referred to in RIPA. Trading Standards may use Covert Directed Surveillance, Covert Human Intelligence Sources and acquisition of communications data. Environmental Crime enforcement team may use Covert Directed Surveillance and acquisition of

communications data. Internal Audit fraud investigators may use Covert Directed Surveillance and acquisition of communications data.

- 1.4 Covert Directed Surveillance is undertaken in relation to a specific investigation or operation, where the person or persons subject to the surveillance are unaware that it is, or may be, taking place. The activity is also likely to result in obtaining private information about a person, whether or not it is specifically for the purpose of the investigation.
- 1.5 Investigations may also require the use of Covert Human Intelligence Sources (CHIS). These may be under-cover officers, agents or informants. Such sources may be used by the County Council to obtain and pass on information about another person, without their knowledge, as a result of establishing or making use of an existing relationship. This clearly has implications as regards the invasion of a person's privacy and is an activity which the legislation regulates. A CHIS (other than our own staff) would be used only rarely and in exceptional circumstances.
- 1.6 The Investigatory Powers Act (IPA) also requires a control and authorisation procedure to be in place in respect to the acquisition of telecommunications data. The County Council needs to comply with these requirements when obtaining, for example, telephone or internet subscriber, billing and account information.
- 1.7 In addition, the IPA put in place the Investigatory Powers Commissioner whose duties include inspection those public bodies undertaking covert surveillance and the acquisition of communications data and introduced an Investigatory Powers tribunal to examine complaints that human rights may have been infringed.

2. Policy Statement

- 2.1 Kent County Council will not undertake any activity defined within RIPA or the IPA without prior authorisation in the legally prescribed form.
- 2.2 The Corporate Director of Growth, Environment and Transport has been appointed as the overall Senior Responsible Officer (SRO) with responsibility for the use of covert techniques and, as such, has been given authority to appoint Authorising Officers for the purposes of RIPA (for surveillance and CHIS activities), a Senior Responsible Officer and "Made Aware" Officers for the purposes of the IPA (for access to communications data). The Corporate Director is a member of the corporate leadership team currently called Corporate Management Team.
- 2.3 The Authorising Officer will not authorise the use of surveillance techniques or CHIS unless the authorisation can be shown to be necessary for the purpose of preventing or detecting crime or of preventing disorder.
- 2.4 In addition, the Authorising Officer must believe that the surveillance or use of CHIS is lawful, necessary and proportionate to what it seeks to achieve. In making this judgment, the officer will consider whether the information can be obtained using other methods and whether efforts have been made to reduce the impact of the surveillance or intrusion on other people, who are not the subject of the operation.

- 2.5 Applications for authorisation of surveillance or the use of a CHIS will be made in writing on the appropriate form (see Annexes 1 or 2 for example forms).
- 2.6 Intrusive surveillance operations are defined as activities using covert surveillance techniques on residential premises or in any private vehicle, which involves the use of a surveillance device or an individual in such a vehicle or on such premises. Kent County Council officers are NOT legally entitled to authorise or undertake these types of operations. Operations must not be carried out where legal consultations take place at the places of business of legal advisors or similar places such as courts, Police stations, prisons or other places of detention.
- 2.7 Public bodies are permitted to record telephone conversations, where one party consents to the recording being made and an appropriate authorisation has been granted. On occasions, officers do need to record telephone conversations, to secure evidence.
- 2.8 It is the policy of this authority to be open and transparent in the way that it works and delivers its services. To that end, a well-publicised KCC Complaints procedure is in place and information on how to make a complaint will be provided on request being made to the Corporate Director or Authorising Officer.

3. Internet and social media investigations

- 3.1 On-line communication has grown and developed significantly over recent years. The use of this type of communication in the commission of crime is a recognised aspect of routine investigations.
- 3.2 Observing an individual's lifestyle as shown in their social media pages or securing subscriber details for e-mail addresses is covered by the same considerations as off-line activity.
- 3.3 Staff using the internet for investigative purposes must not, under any circumstances, use their personal equipment or their personal social media or other accounts.
- 3.4 KCC will provide equipment not linked to its servers for this purpose and will maintain a number of "legends" (false on-line personalities) for use in investigations. A register of all such legends will be maintained by the Trading Standards Service.
- 3.5 Under no circumstances will a legend include personal details of any person known to be a real person, including their photograph, or a name known to be linked to the subject of the covert technique.
- 3.6 A log will be maintained by the Trading Standards Service of the use of each legend. The log will include details of the user, time, date and enforcement purpose for which the legend is used. The log will be updated each time a legend is used.

- 3.7 It is unlikely that single viewing of open source data will amount to obtaining private information and it is therefore unlikely that an authorisation will be required. If in doubt, the investigating officer should consult a RIPA Authorising Manager.
- 3.8 Where data has restricted access (e.g. where access is restricted to “friends” on a social networking site), an application for CHIS and, if appropriate, directed surveillance should be made before any attempt to circumvent those access controls is made.

4. Obtaining Authorisation

- 4.1 The Corporate Director will designate by name one or more Directors, Heads of Service, Service Managers or equivalent to fulfil the role of Authorising Officer (for the purposes of Surveillance and CHIS authorisation), Senior Responsible Officer and “Made Aware” Officer (for the purposes of access to communications data). The Corporate Director will cause to be maintained a register of the names of such officers.
- 4.2 Where a CHIS is a juvenile or a vulnerable person, or there is the likelihood that the information acquired by covert surveillance will be Confidential Information (see Glossary), then the authorisation must be from the Head of Paid Service or, in his absence, a Corporate Director nominated by the Head of Paid Service to deputise for him. In the event of such circumstances, the KCC General Counsel will also be informed.
- 4.3 Authorisations from the Authorising Officer for directed surveillance or to use a CHIS shall be obtained using the appropriate application form (see annexes 1 and 2 for example forms). Also see Section 12 in relation to CHIS.
- 4.4 Applications for access to communications data shall be made using the system provided by the National Anti-Fraud Network.
- 4.5 Guidance for completing and processing the application forms is attached (annexes 3 or 4). Guidance for use of the NAFN portal is published and updated on that website.
- 4.6 If authorisation is granted by the Authorising Officer, the applicant, or a suitably experienced officer nominated by the applicant, will make the necessary arrangements to secure judicial approval of the authorisation in compliance with the requirements of the Protection of Freedoms Act 2012. This requires the applicant, or their nominee, to attend a Magistrates’ Court and seek an approval order.

5. Duration of authorisations

- 5.1 All records shall be kept for at least 3 years.
- 5.2 A written authorisation (unless renewed) will cease to have effect at the end of the following periods from when it took effect:
- a) Directed Surveillance - 3 months
 - b) Conduct and use of CHIS - 12 months

6. Reviews

- 6.1 Regular review of authorisations shall be undertaken by the relevant Authorising Officer to assess the need for the surveillance or CHIS to continue. The results of the review shall be recorded on the central record of authorisations (see annexes 1 or 2 for review forms). Where surveillance or CHIS activity provides access to Confidential Information or involves collateral intrusion, particular attention shall be given to the review for the need for surveillance or activity in such circumstances.
- 6.2 In each case, the Authorising Officer shall determine how often a review is to take place, and this should be as frequently as is considered necessary and practicable.

7. Renewals

- 7.1 If, at any time, an authorisation ceases to have effect and the Authorising Officer considers it necessary for the authorisation to continue for the purposes for which it was given, s/he may renew it, in writing, for a further period of:
- three months – directed surveillance
 - twelve months – use of a CHIS
 - (see annexes 1 or 2 for examples of renewal forms)
- 7.2 A renewal takes effect at the time at which the authorisation would have ceased to have effect but for the renewal. An application for renewal should not be made until shortly before the authorisation period is drawing to an end. Any person who would be entitled to grant a new authorisation can renew an authorisation. Authorisations may be renewed more than once provided they continue to meet the criteria for authorisation.

8. Cancellations

- 8.1 The Authorising Officer who granted or last renewed the authorisation must cancel it if s/he is satisfied that the Directed Surveillance or the use or conduct of the CHIS no longer meets the criteria for which it was authorised (see annexes 1 or 2 for examples of cancellation forms). When the Authorising Officer is no longer available, this duty will fall on the person who has taken over the role of Authorising Officer or the person who is acting as Authorising Officer.
- 8.2 As soon as the decision is taken that Directed Surveillance should be discontinued or the use or conduct of the CHIS no longer meets the criteria for which it was authorised, the instruction must be given to those involved to stop all surveillance of the subject or use of the CHIS. The authorisation does not 'expire' when the activity has been carried out or is deemed no longer necessary. It must be either cancelled or renewed. The date and time when such an instruction was given should be recorded in the central register of authorisations and the notification of cancellation where relevant.

9. Central Register and Oversight by Corporate Director

- 9.1 A copy of any authorisation, any renewal or cancellation (together with any supporting information relevant to such authorisation or cancellation) shall be forwarded to the Corporate Director or a person nominated by them within 5

working days of the date of the application, authorisation, notice, renewal or cancellation.

9.2 The Corporate Director shall:

- (a) ensure that a register of the documents referred to in paragraph 9.1 above is kept;
- (b) monitor the quality of the documents and information forwarded;
- (c) monitor the integrity of the process in place within the Council for the management of CHIS;
- (d) monitor compliance with Part II of RIPA and with the Codes;
- (e) oversee the reporting of errors to the relevant Oversight Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
- (f) engage with the IPC inspectors when they conduct their inspections, where applicable; and
- (g) where necessary, oversee the implementation of post-inspection action plans approved by the relevant Oversight Commissioner.

10. Training

- 10.1 The Authorising Officers shall be provided with training to ensure awareness of the legislative framework.

11. Planned and Directed Use of KCC CCTV Systems

- 11.1 KCC's CCTV systems shall not be used for Directed Surveillance, without the Corporate Director or other senior legal officer confirming to the relevant operational staff that a valid authorisation is in place.

12. Special Arrangements

- 12.1 The use of a CHIS can present significant risk to the security and welfare of the person. Each authorisation will have a specific documented risk assessment and the CHIS (and all members of any support team) will be briefed on the details of the assessment. Kent County Council has a Memorandum of Understanding with Kent Police for circumstances where the CHIS is not an employee or other agent working for or on behalf of the authority. In other circumstances such as a member of public, "whistle-blower" or informant then Kent Police will handle the operation of the CHIS. Kent Police will ensure the compliance with the Regulations, codes of practice and all other risks such as the security and welfare of the CHIS (and associated persons). Any necessary and relevant information will be provided following best practise as to not risk identifying CHIS unless this is appropriate and approved by Kent Police. In such cases, Kent Police are responsible for all records and monitoring processes.

13. Oversight

- 13.1 The Corporate Director shall ensure that this policy is reviewed on an annual basis by presenting a report of activity to the Governance and Audit Committee (or similar Committee). There shall also be brief details of all activity under this policy provided to the Corporate Director and shared with the appropriate Cabinet

Member at such intervals between the annual reports as the Corporate Director sees fit.

- 13.2 Every two years the KCC General Counsel will review the policy, and also contact the Corporate Directors responsible for all other units and services within Kent County Council to inform them of any changes or alterations. The communication will also seek to highlight the details of the restrictions imposed by RIPA, the IPA and Human Rights legislation. Should any unit or service (other than those permitted by this policy) consider that any actions it may have taken (or are considering taking) might infringe this policy, they must be raised with the KCC General Counsel as soon as practicable.

Glossary

"Confidential information" consists of matters subject to legal privilege, confidential personal information, or confidential journalistic material.

"Directed Surveillance" is defined in section 26 (2) of RIPA as surveillance which is covert, but not intrusive (i.e. takes place on residential premises or in any private vehicle), and undertaken:

- (a) for the purpose of specific investigation or specific operation;
- (b) in such a manner is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- (c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under Part II of RIPA to be sought for the carrying out of the surveillance.

"A person is a Covert Human Intelligence Source" if:

- he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything within paragraph (b) or (c);
- he covertly uses such a relationship to obtain information or to provide access to any information to another person; or
- he covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

"Communications data", in relation to a telecommunications operator, telecommunications service or telecommunication system, means entity data or events data—

(a) which is (or is to be or is capable of being) held or obtained by, or on behalf of, a telecommunications operator and—

(i) is about an entity to which a telecommunications service is provided and relates to the provision of the service,

(ii) is comprised in, included as part of, attached to or logically associated with a communication (whether by the sender or otherwise) for the purposes of a telecommunication system by means of which the communication is being or may be transmitted, or

(iii) does not fall within sub-paragraph (i) or (ii) but does relate to the use of a telecommunications service or a telecommunication system,

(b) which is available directly from a telecommunication system and falls within sub-paragraph (ii) of paragraph (a), or

(c) which—

(i) is (or is to be or is capable of being) held or obtained by, or on behalf of, a telecommunications operator,

(ii) is about the architecture of a telecommunication system, and

(iii) is not about a specific person,

but does not include any content of a communication or anything which, in the absence of subsection (6)(b), would be content of a communication.

Annex 1 – Surveillance forms

Application for Authorisation to Carry Out Directed Surveillance

Review of Directed Surveillance Authorisation

Cancellation of a Directed Surveillance Authorisation

Application of Renewal of a Directed Surveillance Authorisation

(Forms available at <http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-forms/>)

Annex 2 – Covert Human Intelligence forms

Application for Authorisation of the Use or Conduct of a Covert Human Intelligence Source

Review of a Covert Human Intelligence Source Authorisation

Cancellation of an Authorisation for the use of or Conduct of a Covert Human Intelligence Source

Application for renewal of a Covert Human Intelligence Source Authorisation

(Forms available at <http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-forms/>)

Annex 3 - Guidance on completing surveillance forms

Details of Applicant

Details of requesting officer's work address and contact details should be entered.

Details of Application

1. Give rank or position of authorising officer in accordance with the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003; No. 3171

Fill in details of Authorising Officer (see paras 3.1 and 3.2 of Policy)

2. Purpose of the specific operation or investigation

Outline what the operation is about and what is hoped to be achieved by the investigation. Indicate whether other methods have already been used to obtain this information. Give sufficient details so that the Authorising Officer has enough information to give the Authority e.g. "Surveillance at Oakwood House and Mr. X".

3. Describe in detail the surveillance operation to be authorised and expected duration, including any premises, vehicles or equipment (e.g. camera, binoculars, recorder) that may be used

Give as much detail as possible of the action to be taken including which other officers may be employed in the surveillance and their roles. If appropriate append any investigation plan to the application and a map of the location at which the surveillance is to be carried out.

4. The identities, where known, of those to be subject of the directed surveillance

5. Explain the information that it is desired to obtain as a result of the directed surveillance

This information should only be obtained if it furthers the investigation or informs any future actions

6. Identify on which grounds the directed surveillance is necessary under section 28(3) of RIPA

The ONLY grounds for carrying out Directed Surveillance activity is for the purpose of preventing or detecting crime or of preventing disorder.

This can be used in the context of local authority prosecutions, or where an employee is suspected of committing a criminal offence e.g. fraud.

7. Explain why this directed surveillance is necessary on the grounds you have identified (code chapter 3)

Outline what other methods may have been attempted in an effort to obtain the information and why it is now necessary to use surveillance.

8. Supply details of any potential collateral intrusion and why the intrusion is unavoidable (code chapter 3) Describe precautions you will take to minimise collateral intrusion

Who else will be affected by the surveillance, what steps have been done to avoid this, and why it is unavoidable?

9. Explain why the directed surveillance is proportionate to what it seeks to achieve. How intrusive might it be on the subject of surveillance or on others? And why is this intrusion outweighed by the need for surveillance in operational terms or can the evidence be obtained by any other means? [Code chapter 3]

If the Directed Surveillance is necessary, is it proportionate to what is sought to be achieved by carrying it out? This involves balancing the intrusiveness of the activity on the target and others who may be affected by it against the need for the activity in operational terms. Reasons should be given why what is sought justifies the potential intrusion on the individual's personal life and his privacy. The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means.

10. Confidential information (Code chapter 4)

Will information of a confidential nature be obtained (i.e. communications subject to legal privilege, or communications involving confidential personal information and confidential journalistic material) if so the appropriate level of authorisation must be obtained (see para 3.2 of the Policy).

12. Authorising Officer's Statement

13. Authorising Officer's comments

Must be completed outlining why it is proportionate and why he/she is satisfied that it is necessary.

Annex 4 - Guidance on completing Covert Human Intelligence forms

Details of Application

1. Authority Required

Fill in details of Authorising Officer (see paras 4.1 and 4.2 of the Policy)

Where a vulnerable individual or juvenile source is to be used, the authorisation **MUST** be given by the Head of Paid Service or, in their absence, the Corporate Director deputising for them.

2. Describe the purpose of the specific operation or investigation

Sufficient details so that the Authorising Officer has enough information to give Authority. Outline what the operation is about and the other methods used already to obtain this information.

3. Describe in detail the purpose for which the source will be tasked or used

Give as much detail as possible as to what the use of the source is intended to achieve.

4. Describe in detail the proposed covert conduct of the source or how the source is to be used

Describe in detail the role of the source and the circumstances in which the source will be used

5. Identify on which grounds the conduct or the use of the source is necessary under Section 29(3) of RIPA

The **ONLY** grounds for carrying out Directed Surveillance activity is for the purpose of preventing or detecting crime or of preventing disorder

6. Explain why this conduct or use of the source is necessary on the grounds you have identified (Code chapter 3)

Outline what other methods may have been attempted in an effort to obtain the information and why it is now necessary to use surveillance for the investigation.

7. Supply details of any potential collateral intrusion and why the intrusion is unavoidable (Code chapter 3)

Who else will be affected, what steps have been done to avoid this, and why it is unavoidable?

8. Are there any particular sensitivities in the local community where the source is to be used? Are similar activities being undertaken by other public authorities that could impact on the deployment of the source? (see Code chapter 3)

Ensure that other authorities such as the police or other council departments are not conducting a parallel investigation or other activity which might be disrupted.

9. Provide an assessment of the risk to the source in carrying out the proposed conduct (see Code chapter 6)

A risk assessment will have to be carried out to establish the risks to that particular source, taking into account their strengths and weaknesses. The person who has day to day responsibility for the source and their security (the 'Handler') and the person responsible for general oversight of the use made of the source (the 'Controller') should be involved in the risk assessment.

10. Explain why this conduct or use of the source is proportionate to what it seeks to achieve. How intrusive might it be on the subject(s) of surveillance or on others? How is this intrusion outweighed by the need for a source in operational terms, and could the evidence be obtained by any other means? [Code chapter 3]

If the use of a Covert Human Intelligence Source is necessary, is it proportionate to what is sought to be achieved by carrying it out? This involves balancing the intrusiveness of the activity on the target and others who may be affected by it against the need for the activity in operational terms. Reasons should be given why what is sought justifies the potential intrusion on the individual's personal life and his privacy. The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means.

11. Confidential information (Code chapter 4). Indicate the likelihood of acquiring any confidential information

Will information of a confidential nature be obtained (i.e. communications subject to legal privilege, or communications involving confidential personal information and confidential journalistic material) if so the appropriate level of authorisation must be obtained (see para 3.2 of the Policy).

13. Authorising Officer's comments

Must be completed outlining why it is proportionate and why he/she is satisfied that it is necessary to use the source and that a proper risk assessment has been carried out.

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Investigatory Powers
Commissioner's Office

PO Box 29105, London
SW1V 1ZU

Mr. Mark Rolfe
Head of Kent Scientific Services
Kent County Council

14 April 2022

Relevant Error – Directed Surveillance – Trading Standards

Dear Mr. Rolfe,

Thank you for the formal relevant error notification received by this office on 5 April 2022. The relevant error relates to covert surveillance, by way of obtaining photographic images whilst conducting observations, without the necessary protection of RIPA being in place. Your report comprehensively describes the background to the activity which, whilst being conducted in good faith gave no consideration as to the need or otherwise for a directed surveillance authorisation being sought. It is clear that the officer deployed to the area did so without seeking advice or guidance from appropriate persons within the council. Had they sought such guidance we are sure that the directions provided within paragraphs 3.39 and 4.32¹ would have been followed.

We are satisfied that there has been no deliberate attempt to circumvent the legislation or code of practice, and that the relevant error occurred due to inexperience and lack of knowledge on RIPA matters. We acknowledge that a thorough review has been carried out by you and that a number of learning points have been identified from an operational perspective. We are satisfied that the processes applied once the error was identified, and the remedial action taken, have been appropriate and in accordance with the relevant codes of practice.

Whilst we acknowledge the procedure applied to images taken by your member of staff and it is worth noting that despite being gathered without RIPA protection it does not necessarily follow that the images would be inadmissible in any court proceedings. You may wish to consider this aspect should the images be of evidential value and would wish to explore this aspect with the Crown Prosecution Service (CPS) if appropriate.

We would also ask that you ensure the relevant error is outlined to the IPCO inspection team at your next scheduled inspection.

Yours sincerely

IPCO Secretariat

IPCO Secretariat
Investigatory Powers Commissioner's Office

¹ Home Office Code of Practice on Covert Surveillance and Property Interference, August 2018.

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Kent County Council Audit Progress Report and Sector Update

Year ending 31 March 2022

November 2022
Page 97



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The contents of this report relate only to the matters which have come to our attention, which we believe need to be reported to you as part of our audit planning process. It is not a comprehensive record of all the relevant matters, which may be subject to change, and in particular we cannot be held responsible to you for reporting all of the risks which may affect the Authority or all weaknesses in your internal controls. This report has been prepared solely for your benefit and should not be quoted in whole or in part without our prior written consent. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

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Introduction

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This paper provides the Governance and Audit Committee with a report on progress in delivering our responsibilities as your external auditors.

The paper also includes:

- a summary of emerging national issues and developments that may be relevant to you as a local authority; and
- includes a number of challenge questions in respect of these emerging issues which the Committee may wish to consider (these are a tool to use, if helpful, rather than formal questions requiring responses for audit purposes)

Members of the Governance and Audit Committee can find further useful material on our website, where we have a section dedicated to our work in the public sector. Here you can download copies of our publications <https://www.grantthornton.co.uk/industries/public-sector/local-government/>

If you would like further information on any items in this briefing, or would like to register with Grant Thornton to receive regular email updates on issues that are of interest to you, please contact either your Engagement Lead or Engagement Manager.

Progress at November 2022

2021/22 financial statements audit update

In March 2022, we carried out our risk assessment and planning work for the 2021/22 audit. Detailed progress on this work was communicated to the Governance and Audit Committee in April 2022. Our work did not identify any issues that we needed to bring to your attention and we communicated that our overall assessment of the audit was 'On track'.

Since then, our final accounts visit started in October 2022 as planned. Your finance team provided us with a full set of financial statements as well as a complete suite of working papers that has enabled us to progress the audit as planned. The audit is still progressing and we have not identified any issues that we need to bring to your attention at this stage.

Our substantive audit work is scheduled to complete in December, enabling us to issue our audit opinion following the G&A in January 2023. We continue to assess the status of the audit as being 'On track'.

As communicated in October 2022, the audit of the Pension Fund is complete.

Infrastructure assets update

In recent months, an issue relating to the reporting of infrastructure assets has led to delays in local authority audits, principally for highways authorities. The issue is a technical accounting one and arises principally because of information availability relating to these assets.

This is a material issue which impacts Kent County Council as the Council reports to hold over £600m of infrastructure assets as at 31 March 2021. Your finance team are aware of the issue and have responded to CIPFA's consultation. There is regular dialogue between us and your finance team on the issue to ensure recent updates/guidance is actioned as soon as possible.

As at the date of writing, the sector is awaiting DLUCH to propose a statutory override to Parliament in respect of Infrastructure assets later this month. This should allow audit opinions (some of which have delayed throughout 2022) to be completed for relevant authorities. This includes Kent's 2021/22 financial statements.

Value for Money

In July 2022 we issued our Audit Plan for the 2021/22 audit. This Audit Plan included the outcome of our risk assessment of the Authority's arrangements to secure value for money (VfM). At this stage, we identified 1 risk of significant weakness as detailed below:

1. the risk that the Council's arrangements in relation to SEND and EHCP services are not effective to ensure financial sustainability

Following the Audit Plan, we have continued to carry out risk assessment procedures taking into account events and circumstances both internal and external to the Authority. This work has identified a new risk of significant weakness in relation to financial sustainability as detailed below:

2. the risk that the Council's arrangements in relation to identifying and delivering savings are not effective to ensure financial sustainability

Progress at November (cont.)

Background and auditor considerations in relation to the new risk of significant weakness

County Councils across the UK have begun to report significant shortfalls in their 2023-24 budgets. A recent article by the Local Government Chronicle conducted research into 17 County Councils and found that the combined deficits are expected to reach over £500m. The full article can be found here [Revealed: Counties face combined £500m budget black hole | Local Government Chronicle \(LGC\) \[lgcplus.com\]](https://www.lgcplus.com/news/2022/10/27/revealed-counties-face-combined-500m-budget-black-hole/).

On 27 October the County Councils Network (CCN) issued a press release that stated:

the 40 largest county and unitary authorities have reported a forecast £3.5bn increase in costs over this year and next year due to rising inflation and demands for council services. This is more than double previous estimates over the same period. These additional costs mean councils are already facing a real-terms cut in funding this year and next, before the possibility of further reductions which may be imposed as part of the government's Medium-Term Financial Plan. Last year's Spending Review provided an uplift in funding for key services, but this has been wiped out by rising inflation; with two-thirds of councils say they are going to overspend their budgets this year without making savings and cuts. Faced with £1.78bn of inflationary and demand costs in 2023-24, councils are already having to consider further service reductions"

For Kent County Council, the combination of inflationary pressures, higher than expected demand and non-delivery of savings has resulted in a forecasted £51m overspend by the end of Q1 of 2022/23. This deficit is not as a result of a one-off transaction, rather, it marks a significant deterioration in the underlying financial position of the Authority. If decisive, coordinated action is not taken and implemented, the status quo is likely to take the authority into significant financial difficulties over the medium term. We understand management are working to implement actions to address this issue including potential policy changes to bring the deficit down to a manageable level.

It is for this reason as to why we have identified a risk of significant weakness around the arrangements to identify and deliver savings.

Meetings and communication

In October, we met with the Corporate Director of Finance to discuss a range of topics including financial sustainability, governance matters and progress of the audit.

We are also scheduled to meet with your Chief Executive on 10 November as part of our regular quarterly liaison meetings.

There is also daily communication between your finance team and the audit team as part of the final accounts process. This communication is open, transparent and effective to ensure the smooth running of the audit.

Audit Deliverables

2021/22 Deliverables	Planned Date	Status
<p>Audit Plan</p> <p>We are required to issue a detailed audit plan to the Governance & Audit Committee setting out our proposed approach in order to give an opinion on the Council's 2021/22 financial statements and the Auditor's Annual Report on the Council's Value for Money arrangements.</p>	July 2022	complete
<p>Audit Findings Report</p> <p>The Audit Findings Report will be reported to the December Governance & Audit Committee</p>	January 2023	Not yet due
<p>Auditors Report</p> <p>This includes the opinion on your financial statements.</p>	January 2023	Not yet due
<p>Auditor's Annual Report</p> <p>This Report communicates the key issues arising from our Value for Money work.</p>	March 2023	Not yet due
2020/21 Deliverables	Planned Date	Status
<p>Auditor's Annual Report</p> <p>This Report communicates the key issues arising from our Value for Money work. This was presented in April Governance & Audit Committee.</p>	April 2022	Complete
<p>Teachers Pensions Scheme – certification</p> <p>This is the report we submit to Teachers Pensions based upon the mandated agreed upon procedures we are required to perform. We are still awaiting supporting data from the Council's contractor before we can complete this work</p>	December 2022	In Progress

Sector Update

Authorities continue to try to achieve greater efficiency in the delivery of public services, whilst facing the challenges to address rising demand, ongoing budget pressures and social inequality.

Our sector update provides you with an up to date summary of emerging national issues and developments to support you. We cover areas which may have an impact on your organisation, the wider local government sector and the public sector as a whole. Links are provided to the detailed report/briefing to allow you to delve further and find out more.

Our public sector team at Grant Thornton also undertake research on service and technical issues. We will bring you the latest research publications in this update. We also include areas of potential interest to start conversations within the organisation and with audit committee members, as well as any accounting and regulatory updates.

- [Grant Thornton Publications](#)
- [Insights from local government sector specialists](#)
- [Reports of interest](#)
- [Accounting and regulatory updates](#)

More information can be found on our dedicated public sector and local government sections on the Grant Thornton website by clicking on the logos below:

A teal rectangular button with the text "Public Sector" in white, sans-serif font, centered within the button.

Public Sector

A dark purple rectangular button with the text "Local government" in white, sans-serif font, centered within the button.

Local
government

The Value of Internal Audit – CIPFA

One of the key elements of good governance is an independent and objective internal audit service. Some organisations engage fully and reap significant benefits from the assurance, insight and expertise they bring whilst others pay lip-service to them and see their work as an administrative burden.

CIPFA's recent report, [Internal Audit: Untapped Potential](#), lifts the lid on internal audit in public services. For some chief financial officers and chief executives, this report confirms the value and contribution of internal audit teams with 87% of respondents recognising the contribution internal audit makes to their organisation. However, some leadership teams saw internal audit as providing a basic service at minimal cost.

Getting the most out of the function requires honest conversations and long-term planning. Maintaining appropriate skills and knowledge within the function is necessary to ensure high quality internal audit in public services are retained.

Culture and governance

The Audit Committee should monitor the delivery of internal audit and their output will be a key part of the annual work-plan. However, internal audit is not a substitute for risk management and should enhance the overall assurances received by management. Executives and Officers should engage with internal audit recommendations to ensure the organisation gains maximum value from reviews.

Capacity

Reducing internal audit days can lead to a lack of 'corporate grip' and not identifying issues at an early stage. This report raises concerns over the capacity of internal audit across the public sector. The profession needs to be valued and invested in to make it more attractive to new blood and for bodies to be able to attract the best candidates to their service.

Expectations

To maximise the impact of internal audit, a clear and aligned strategic audit plan and annual audit plan should be in place. This should be agreed with all stakeholders.

Future plans

Internal audit needs to adapt to the changing landscape, including risks such as climate change, digital and technological developments, cyber-security and ongoing financial and service pressures within their planning processes. For financial resilience and medium- and long-term financial strategies internal audit can provide vital independent assurance to decision makers to allow them to take on more risk and be more ambitious. Leadership teams need to be clear on what assurances they will require going forward.

For more information, [Rob Whiteman](#) share his views on this report.



Response to local audit consultation – Department for Levelling Up, Housing and Communities (“DLUHC”)

The Department for Levelling Up, Housing and Communities (“DLUHC”) has published its response to the local audit consultation. This follows the “Redmond Review”, which reported in September 2020.

The response confirms plans to establish a new regulator, the Audit Reporting and Governance Authority (ARGA), as the system leader for local audit within a new, simplified local audit framework.

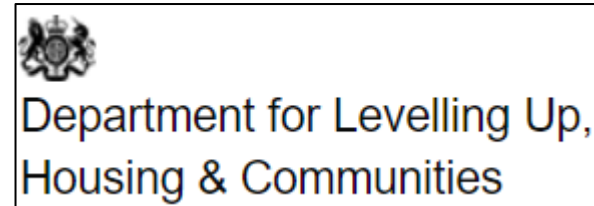
Ahead of ARGA’s establishment, a shadow system leader arrangement will start at the Financial Reporting Council (FRC) from September 2022.

The consultation response also announces:

- Plans to make audit committees compulsory for all councils, with each audit committee required to include at least one independent member. This will create greater transparency and consistency across local bodies.
- ARGA will take over statutory responsibility for preparing and issuing the Code of Audit Practice (from the National Audit Office).
- A post-implementation review of the new Value for Money arrangements. The Code is a key part of the local audit system, and it is important to ensure that it helps to facilitate effective local audit. To allow time for the new arrangements to bed in the response proposes this is completed within three years.

The full response can be found here:

[Government response to local audit framework: technical consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/government-response-to-local-audit-framework-technical-consultation)



Audit and Risk Assurance Committee effectiveness tool – NAO

The National Audit Office (NAO) has published this tool which supports Audit Committees in assessing their effectiveness.

The NAO comment “Audit and Risk Assurance Committees (ARACs) play a crucial role in supporting the effective governance of central government departments, their agencies and arm’s-length bodies.

ARACs are operating in a highly challenging context. Government organisations are managing many short- and long-term risks and are required to be resilient to a number of pressures. This has created an environment where ARACs need to be dynamic and responsive to the changing risk profiles and demands of their organisations. ARACs can see this as an opportunity to work out how they can most proactively work with the Board and accounting officer.

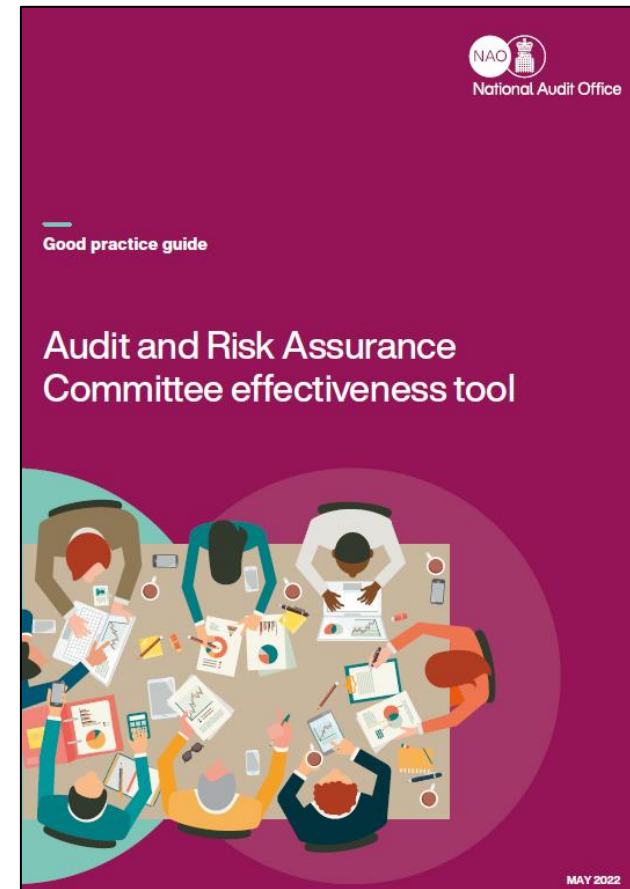
Against this background, the NAO’s effectiveness tool provides a way for ARACs to assess their effectiveness against more than just the basic requirements. It provides aspects of good practice to give ARACs greater confidence and the opportunity to meet the requirements of their role.

The NAO’s effectiveness tool is a comprehensive way for ARACs to assess their effectiveness on a regular basis.”

The tool covers:

- Membership, independence, objectivity and understanding
- Skills and experience
- Roles and responsibilities
- Scope
- Communication and reporting

Although the tool is designed for central government Audit Committees it is also relevant to local government.



The guide can be found here:

[Audit and Risk Assurance Committee effectiveness tool - National Audit Office \(NAO\) Report](#)



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