

GOVERNANCE AND AUDIT COMMITTEE

Wednesday, 25th October, 2023

10.00 am

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





AGENDA

GOVERNANCE AND AUDIT COMMITTEE

Wednesday, 25th October, 2023, at 10.00 am
Council Chamber, Sessions House, County
Hall, Maidstone

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

Membership (12)

| | |
|------------------------------|--|
| Conservative (8) | Mrs R Binks (Chairman), Mrs S Hudson (Vice-Chairman), Mr D L Brazier, Mr N J D Chard, Mr P C Cooper, Mr D Robey, Mr D Ross and Mr R J Thomas |
| 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. Apologies and Substitutes
3. Declarations of Interest in items on the agenda for this meeting
4. Minutes of the meeting held on 14 September 2023 (Pages 1 - 6)
5. Internal Audit Progress Report - Procurement & Contract Extension (Pages 7 - 14)
6. Counter Fraud Progress Report (Pages 15 - 28)
7. Verbal Update on the Review of the Financial Regulations
8. Annual Customer Feedback Report 2022/23 (Pages 29 - 62)

9. Covert Enforcement Techniques Activity 2022-23 (Pages 63 - 82)
10. External Audit Governance Review (Pages 83 - 104)
11. External Audit Progress Report and Sector Update
To follow.
12. External Audit- Pension Fund Audit Findings Report
To follow.
13. 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

Tuesday, 17 October 2023

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, 14 September 2023.

PRESENT: Mrs R Binks (Chairman), Mr A Brady, Mr D L Brazier, Mr A J Hook, Dr D Horne, Mr M A J Hood, Mrs S Hudson, Mr D Robey, Mr D Ross and Mr R J Thomas

ALSO PRESENT: Mr P Oakford

IN ATTENDANCE: Ms Z Cooke (Corporate Director of Finance), Mrs C Head (Head of Finance Operations), Mr B Watts (General Counsel), Mr J Idle (Head of Internal Audit), Miss E Feakins (Chief Accountant), Mr Parris Williams and Miss K Reynolds (Democratic Services Officer)

UNRESTRICTED ITEMS

136. Introduction/Webcasting

(Item 1)

The Chair welcomed the new Members to the Committee. It was said that their presence at the meeting was understood as confirmation that they had undertaken the required training.

137. Apologies and Substitutes

(Item 2)

Apologies for absence had been received from Mr Chard and Mr Cooper. Mr Rayner was present as substitute for Mr Chard.

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

(Item 3)

Mr Rayner made a declaration as Deputy Cabinet Member for Finance, Corporate and Traded Services. The General Counsel confirmed that there had been consideration of the potential conflicts of interest in relation to this substitution.

139. Minutes of the meeting held on 6 July 2023

(Item 4)

It was RESOLVED that the minutes of the meeting held on 6 July 2023 are correctly recorded and they be signed by the Chair. There were no matters arising.

140. Election of Vice-Chair

(Item 5)

1. Mr Rayner proposed, and Mr Ross seconded that Mrs Hudson be elected Vice-Chair of the Governance and Audit Committee.
2. It was agreed unanimously that Mrs Hudson be elected Vice-Chair of the Committee.
3. RESOLVED that Mrs Hudson be elected Vice-Chair of the Governance and Audit Committee.

141. External Audit Plan 2022/23

(Item 6)

1. Mr Paul Dossett and Mr Parris Williams introduced the report. The three significant risks requiring special audit consideration and procedures to address the likelihood of a material financial statement error were highlighted. These related to the valuation of land and buildings as at 31 March 2023; valuation of the net pension fund liability in the accounts; and the risk of management override of controls. Members were told that materiality at the planning stage of the audit had been determined at £43m. This was consistent with previous years.
2. It was said that there were seven risks of significant value for money weaknesses. The risk assessment work for 2022/23 had identified two new risks of significant weakness, in addition to those identified in the 2021/22 Auditor's Annual Report. The two new risks were 'Governance – behaviours and culture' and 'Economy, Efficiency and Effectiveness – statutory services in relation to Asylum Seekers'.
3. RESOLVED to note the report for assurance.

142. External Audit Progress Report and Sector Update

(Item 7)

1. Mr Parris Williams introduced the report which provided an update on the current progress of external audit work and a summary of emerging national issues and developments. It was highlighted that given the challenges facing Kent, it was of even greater importance that the Authority implements, and is seen to comply with, the recommendations of Internal Audit.
2. RESOLVED to note the report for assurance.

143. Internal Audit Progress Report

(Item 8)

Sue Chandler (Cabinet Member for Integrated Children's Services), Richard Smith (Corporate Director Adult Social Care and Health), Simon Jones (Corporate Director Growth, Environment and Transport), Kevin Kasaven (Director Children's Countywide Services), Sharon Howard (Area Manager, West Kent), Michelle Vickery (Financial Assessment and Income Manager) and Peter Carey (Income Manager) were in attendance for this item.

1. The Head of Internal Audit introduced the report which detailed the summaries of completed Audit reports for the period May – August 2023. The Head of Internal

Audit provided a brief overview of each summary. It was highlighted that the summaries in Appendix A included the highest proportion of Limited Assurances in an Internal Audit Progress report since at least 2019. There were five 'Limited', three 'Adequate' and two 'Substantial' assurance reports. In relation to 'CA10-2023 – LATCO Governance Arrangements', it was highlighted that the Gen2 lessons learned report had not yet been received by the Governance and Audit Committee. Members were told that, given the status of the Council's financial arrangements, the findings of the 'RB17-2023 - Compliance with Financial Regulations' should be a major concern.

2. In response to questions and comments from Members it was said that:
 - a) In relation to 'CS05-2023 - Social Care Debt Recovery', the overall outstanding debt was £42.3m, with £7.9m secured. The debt recovery process had been improved in line with Section 69 of the Care Act and statutory guidance. Following a restructure there would also be Income Recovery Officers specifically working to improve the levels of debt. The Income Manager would provide the overdue social care debtor numbers outside of the meeting. It was confirmed that other local authorities were experiencing similar challenges in relation to social care debt recovery.
 - b) Members requested that 'Spending the Council's Money' be reviewed in response to the findings of the 'RB16-2023 – Data Quality – LAS System – Risk of Overpayments' audit. Members were assured by the Director of Children's Countywide Services and the Area Manager that the service were taking the appropriate actions in response to the audit findings, including liaising with Commissioning and Finance colleagues. It was said that this was not a system-wide issue. Instead, it was an isolated incident that arose due to the change in portfolio holder. The Director Finance confirmed that an annual review was carried out on all the Council's payment controls and a report could be provided to the Committee on these wider controls.
 - c) In relation to 'RB24-2023 - Property Disposals', the Committee was reminded that non-Executive Members were only entitled to information that was necessary for effective scrutiny of decisions. The General Counsel would meet with the Director of Infrastructure to establish whether a register of property disposals could be provided to the Committee for assurance purposes, within the bounds of the local government transparency code 2015.
 - d) It was confirmed that the action plan for improvement in response to 'RB17-2023 – Compliance with Financial Regulations' included the delivery of bitesize workshops on the Financial Regulations and a more robust induction training provision following restructures. The General Counsel reminded Members that work was also being undertaken as part of the Annual Governance Statement 2021-22 actions to ensure widespread understanding of the Council's written governance.
3. It was agreed that the discussion and management response to the 'RB21-2023 - Contract Extensions' and 'CA07-2023 – Procurement' audits would be deferred to the October meeting due to technical difficulties.
4. RESOLVED to note the Internal Audit Progress Report for the period May to August 2023.

144. Internal Audit Annual Opinion

(Item 9)

1. The Head of Internal Audit introduced the report which detailed the overall outcomes and key themes from Internal Audit work undertaken during 2022-23 and the translation of these outcomes to the resultant annual opinion of “Adequate” on the Council’s systems of governance, risk management and internal control. The report also detailed the related performance of the Internal Audit service in delivering this work. It was highlighted that there had been an increase in the number of systems, processes or functions assigned a “Limited” assurance in 2022-23 to 35% compared to 9% in 2019-20. The findings of many audits identified issues of non-compliance which was said to indicate a need for a stronger financial 2nd line of defence within Directorates.
2. The Head of Internal Audit commented that the Council faces many challenges and that is a factor in the type of findings of Internal Audit, however it was emphasised that level of significant findings should not be occurring. It was further emphasised that there is a need for stronger first and second lines of defence within the Council to prevent such issues arising and not wait to be made aware of such serious issues when the third line of defence (which includes Internal Audit) undertakes a review.
3. In addition to core Internal Audit work, the team had undertaken additional tasks including the audit / certification of 56 grants.
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 2022-23 Internal Audit work and the resultant ‘Adequate’ opinion to the Annual Governance Statement.

145. Audit Risk Assessment

(Item 10)

1. The Chief Accountant introduced the report which summarised management’s responses to questions on the Council’s processes in relation to general enquiries of management, fraud, law and regulations, going concern, related parties and accounting estimate. It was said that the completion of the questionnaire had been delayed due to the to delays in finalising and signing off the 2021-22 Statement of Accounts.
2. RESOLVED to consider and agree the management responses provided to Grant Thornton.

146. Annual Governance Statement Update

(Item 11)

1. The General Council provided a verbal update on the revised timeline for the Annual Governance Statement (AGS). It was said that Members would be provided with a more detailed progress report on the 2021/22 actions alongside the draft AGS 2022/23 in October 2023. Members would be invited to an informal briefing on the AGS ahead of the formal committee meeting.
2. RESOLVED to note the verbal update.

147. Other items which the Chairman decides are urgent

(Item 12)

There were no matters arising.

148. Internal Audit Progress Report
(Item 13)

1. The Head of Internal Audit introduced the exempt summaries of the 'Cyber Security Patch Management'; 'Assurance Mapping – Fraud & Error'; and 'Payment Card Industry Data Security Standards' audits.
2. In response to questions on the 'Payment Card Industry Data Security Standards' audit, it was agreed that the Director of Technology would be invited to provide an update to the Governance and Audit Committee.
3. RESOLVED to note the Internal Audit Progress Report for the period May to August 2023.

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From: Clare Maynard, Head of Commercial and Procurement

To: Governance and Audit Cabinet Committee

Date: 25th October 2023

Subject: Progress Update against Internal Audit Reports CA07-2023 (Procurement) and RB21-2023 (Contract Extensions)

Classification: Unrestricted

Summary:

This report seeks to update the Governance and Audit Cabinet Committee on the progress made against the Management Action Plans that have been developed and are being implemented in response to the published Internal Audit Reports CA07-2023 (Procurement) and RB21-2023 (Contract Extensions).

Recommendation(s):

Governance and Audit Cabinet Committee is asked to **consider** and **note** this report and the progress made following the initial presentation of the findings of these two audits and the planned actions shared and agreed with Internal Audit in August 2023.

1. Introduction

- 1.1 Between early and mid-2023, Internal Audit undertook two audits, which respectively considered the adequacy and effectiveness of the procurement arrangements in place to form a judgement on cross-Council adherence to KCC procedures (CA07-2023 – Procurement), and the compliance of contract extensions with the Council's procedures (RB21-2023 – Contract Extensions).
- 1.2 The Internal Audit reports subsequently produced were only able to provide Limited assurance on the above matters, although **Good** and **Very Good** prospects for improvements were provided following consideration of the Management Action Plans submitted in August 2023 by the Management Team of the newly formed Commercial and Procurement Division.

2. Action being taken in response to CA07-2023 (Procurement)

- 2.1 Audit CA07-2023 (Procurement) identified four issues, which essentially related to the inconsistent use of KCC's contract management system, different approaches to the retention of procurement documentation, the absence of key performance indicators to measure compliance with procurement procedures, and the ability for the Council to monitor spend against specific contracts.
- 2.2 Having considered the Management Action Plan submitted in August 2023, which acknowledged the small sample size for the audit but recognised the

positive actions proposed, Internal Audit provided an opinion of **Good** in terms of the prospects for improvement against the issues that were identified.

- 2.3 Since the above assessment was delivered, the Council's new Commercial and Procurement Division, which was formally launched on 1 September 2023, has made good progress to begin addressing the issues identified. Critically, as a part of launching the new Division, senior Officers in the Division have completed an extensive series of briefings to Directorate Management Teams across the Council in addition to a presentation to the T200 Group (KCC's middle management group), outlining the key provisions in KCC's mandatory spending rules contained in the Constitution and Spending the Council's Money.
- 2.4 These presentations have included an emphasis on the requirement for Directorates to ensure that key procurement documentation and records of contracts at or above the value of £25,000 are captured in the Council's contract management system, while being clear that the new Commercial and Procurement Division will support on the initial creation of those contract records. It has also been outlined that, as business partners to Directorates, the new Division will be positioned to scrutinise and work collaboratively across the Council to ensure the completeness and accuracy of those contract records.
- 2.5 Additionally, the formation of the Sourcing Support Team as a part of the new Division has allowed the Council to develop an increased focus on the controls governing compliance with Spending the Council's Money. The team are responsible for the creation of purchase orders and therefore offer a significant opportunity for challenge to practice before an order is created. To this end, the Division is currently undertaking an array of important activity, including:
 - (i) The creation of new 'smart forms' to ensure that mandated practices are followed, and evidence provided, depending on what is being bought.
 - (ii) Configuring all existing Knet How to Buy pages to reflect the mandatory category processes that must be followed,
 - (iii) The development of the requisition form to include contract number so that we can monitor spend by contract and impact on thresholds,
 - (iv) The introduction of a new buyer hierarchy to restrict purchase order creation to a logical total value-based approval structure, and
 - (v) The introduction of Power Automate flows to support the supplier set up process, which will give an increased level of assurance.
- 2.6 Alongside the above, the new Commercial and Procurement Division is taking forward the development of performance measures to assess compliance with KCC's mandatory procedures relating to commercial and procurement activity. This will include ongoing monitoring of the level of engagement with KCC's contract management system, the accuracy of records contained therein, and appropriately early engagement from Directorates with the Division's commercial specialists to map and resource new procurement requirements. Additionally, there will be a logging of requested waivers to the spending rules and more regular reporting on identified non-compliance with the procedures.
- 2.7 Finally, as a part of supporting KCC's implementation of its new Enterprise Business Capabilities (EBC) system, the Commercial and Procurement Division will be exploring with the Council's chosen provider the possibility of more easily

linking spend recorded in KCC's future financial systems with specific contracts to allow for the better monitoring of adherence/variance from projected budgets. However, it should be noted that this is a technically complex piece of work that will run alongside the longer-term implementation of the new EBC system.

3. Action being taken in response to RB21-2023 (Contract Extensions)

- 3.1 Audit RB21-2023 (Contract Extensions) identified six issues, which predominantly related to extensions to contracts not always having been approved in line with KCC's Scheme of Delegation, an inconsistent approach to the completion of contract change notices and consideration of relevant risks ahead of contract extensions, and an insufficient amount of time sometimes being allocated to properly consider an extension option versus re-procurement. It was also raised that there was no monitoring or reporting of which staff have completed and not completed contract management training across KCC.
- 3.2 Having considered the Management Action Plan submitted in August 2023, which again appreciated the small size for the audit but acknowledged the promising action proposed, Internal Audit provided an opinion of **Very Good** in terms of the prospects for improvement against the issues that were identified.
- 3.3 Since the above verdict was delivered, the Council's new Commercial and Procurement Division, which was officially launched on 1 September 2023, has made good progress to start tackling the identified issues. As a part of launching the new Division, and the series of briefings that senior Officers in the Division have delivered to Directorate Management Teams and the T200 Group on the Council's mandatory spending rules, it has been emphasised what the expectations are in contract management and prior to any contract extension.
- 3.4 These presentations have included an emphasis on the necessity for Officers to ensure that contract changes are undertaken in line with internal procedures, including the Scheme of Delegation, public procurement regulations, and represent best value to the Council and residents. It has been highlighted that the new Division will play a key role as commercial business partners to the Council's Directorates in helping to ensure that any such changes are completed in line with such requirements, particularly on KCC's key contracts.
- 3.5 Additionally, the new Division is taking forward the re-launch of one of KCC's key informal governance boards – the Contract Management Review Group – to help ensure that the issues highlighted in this audit report are addressed. This group's terms of reference are being updated to ensure that there is a clearer definition of its authority to focus on reviewing the Council's key contracts, specifically at two key points in the life of the contract (mid-life and prior to any proposed extension). This will provide for strengthened checks and balances and opportunity to scrutinise practice prior to contract extensions.
- 3.6 Finally, there will be a renewed focus on extending valued contract management training for Officers and recording participants on such training. This is planned for the Commercial and Procurement Division, which will provide commercial contract management advice and support to Directorates and in Directorates where named contract responsibility will typically reside. This will include extending accredited Government Commercial Function (GCF)

contract management training across the Council in addition to supporting the opportunity for commercial and procurement professionals within KCC to secure professional qualifications with the Chartered Institute for Procurement and Supply (CIPS), which includes a focus on contract management best practice.

4. Conclusion

- 4.1 Good progress has already been made since the initial presentation of the findings of these two audits and the planned action to the 14 September 2023 meeting of the Governance and Audit Cabinet Committee. As the new Commercial and Procurement Division is fully established and embedded, the identified actions will continue to be progressed at pace. Further update reports will be provided to the Committee at regular intervals to ensure that Members are kept fully apprised and retain the necessary oversight and assurance.

5. Recommendation(s)

Governance and Audit Cabinet Committee is asked to **consider** and **note** this report and the progress made following the initial presentation of the findings of these two audits and the planned actions shared and agreed with Internal Audit in August 2023.

6. Contact details

Report Author:

Michael Bridger
Commercial and Procurement Standards and Improvement Manager
03000 410 110
Michael.Bridger@kent.gov.uk

Relevant Director/s:

Clare Maynard
Head of Commercial and Procurement
03000 416 449
Clare.Maynard@kent.gov.uk

| | |
|---------------------------|---------|
| Audit Opinion | LIMITED |
| Prospects for Improvement | GOOD |

Key Strengths

- Policy documents are appropriately detailed and make clear the mandatory principles and regulations on spending the Councils money to which all staff must adhere.
- Guidance documents under the banner of "how to buy anything" set out in sufficient detail the complete process for procuring at various spend levels including what needs to be done by whom, approvals process, and how to request for support from the appropriate team within Strategic Commissioning. There are also additional supporting documents available to staff to provide further advice on matters that may impact procurement activity.
- Proposed revisions to the Council's Contract Standing Orders "Spending the Council's Money" have been presented at and approved by Governance and Audit Committee and County Council.
- Use of the Kent Portal for procurements over £25k enables a view of all current procurement activity in progress.
- A Contract Management System (CMS) is in use and is capable of recording key information regarding awarded contracts.
- The Procurement and Commercial team have undertaken activity to review the CMS for records completeness and communicate with departments where information is found to be missing or out of date.
- Management Information packs are produced for Corporate Management Team (CMT) providing information regarding current procurement activity by Directorate.
- Cantium accounts payable procedures require that Invoices are not paid without a valid associated Purchase Order.
- The £25k plus purchase requisition procedure includes checks to ensure that Purchase Orders are linked to contracts and that notices of contracts awarded have been published.

Areas for Development

- At the time of audit, some services have direct access to the CMS system to add contract records themselves whilst others will have records added by the Commercial Team on their behalf. Perceptions across departments as to what constitutes a contract is likely to be impacting on what is being added to the CMS and assurance cannot be provided that all contracts are being added or that records being input are accurate. **Medium**
- The CMS system can store related contract information documents however, this functionality is not currently used. Individual teams store tender, scoring and contract documents in their own areas. **Medium**
- Sample testing identified that, for some procurements, not all documents had been retained and stored consistently in one central location. **Medium**
- There are currently no monitored central KPI's in relation to adherence to procurement procedures, the recording of contracts or storage of associated documents. **High**
- Ongoing contract management including operational and commercial performance is the responsibility of the assigned contract manager or team, each contract is therefore managed on an individual basis. There are no universal KPI's in relation to performance. **High**
- Oracle system does not have capacity to record contract numbers or values, subsequently automated tracking of spend against contracts as PO's are raised and invoices processed is not possible. Reliance is placed on individual contract owners monitoring of PO's being raised against contracts. **High**
- The £25k plus procedure for raising Purchase Orders does include the Commercial and Procurement Team verifying that procurement procedures have been followed, and that the Purchase Requisition is linked to a contract, however the procedure for generating Purchase Orders for less than £25k is less robust and assurance cannot be provided that all Purchase Orders raised are linked to current or valid contracts. **High**
- Internal Audit have identified from other areas of activity, procurements that have not been compliant with documented procurement procedures, either through the failure to go out to tender or failure to obtain relevant sign off for a single source tender. This has not been raised as an issue in this report as it has been covered separately in other audit engagements.

Introduction & Key Messages

2022/23 Internal Audit Plan

Issue Implementation

Under the Spotlight

Appendix A - Summaries

Appendix B – 2022/23 Internal Audit Plan Status

Appendix C– Implementation of Agreed Management Actions

Appendix D - Definitions

Prospects for Improvement

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

- Appropriate management responses and action plans have been developed in response to the issues raised.
- The new Commercial and Procurement Division, and the revised rules for procurement and contracting enable a greater emphasis to be placed on record keeping and contract management activities.
- Consideration is being given to the automation of some processes as part of the planned implementation of the new Enterprise Business Capabilities (EBC) system.

Summary of Management Responses

| | No. of Issues Raised | Mgt Action Plan Developed | Risk Accepted & No Action Proposed |
|--------------------|----------------------|---------------------------|------------------------------------|
| High Risk | 2 | 2 | NA |
| Medium Risk | 2 | 2 | NA |
| Low Risk | 0 | 0 | NA |

F6. RB21-2023 – Contract Extensions

Audit Opinion

LIMITED

Prospects for Improvement

VERY GOOD

Key Strengths

- Financial Regulations and Contract and Tendering Standing Orders include the strategic roles and responsibilities for managing and signing contracts.
- There is a Commissioning Handbook in place, which includes guidance on managing contracts including contract variations/extensions and was approved by the Corporate Management Team.
- There is contract management training, including contract variations/extensions, for those involved in managing contracts.
- There is an approved Scheme of Delegation for approving contract variations, including contract extensions.

Areas for Development

- Testing found that 60% of contract extensions had been approved in accordance with the Scheme of Delegation Matrix however the remaining 40% had not been approved in accordance with the Matrix (approved by Directors however, this should have been undertaken by Corporate Directors). **High**
- Testing found that the contract extensions risk assessment template was not routinely completed. For the 40% of the contracts (contract values £120m and £3.3m) where the template had not been completed, the contract extension risks were not identified, documented, and reviewed prior to the approval of contract extensions. **High**
- The information contained in the contracts register was not always up-to-date and key information was not documented. **High**
- Testing found that for 80% of contract extensions the Contract Extension Change Control “CCN” template to approve a contract extension was not completed. **Medium**
- There is no monitoring and reporting of which staff have completed and not completed the Commissioning Standard Team’s contract management training. **Medium**

- Sample testing established that contract extensions’ review and decision dates to extend the original contracts were between 2 and 6 months in advance of the contracts’ end date. This did not allow sufficient time to enable a full re-procurement to be undertaken if this was required. **Medium**

Prospects for Improvement

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

- Management have agreed with all the issues identified in this audit review and provided very detailed and comprehensive actions to strengthen the controls in managing contract extensions. Internal Audit are satisfied that these actions will be addressed appropriately by management.
- Management have provided realistic timescales to implement the actions required to control the risks identified.

Summary of Management Responses

| | No. of Issues Raised | Mgt Action Plan Developed | Risk Accepted & No Action Proposed |
|-------------|----------------------|---------------------------|------------------------------------|
| High Risk | 3 | 3 | NA |
| Medium Risk | 3 | 3 | NA |
| Low Risk | 0 | 0 | NA |

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By: James Flannery – Counter Fraud Manager

To: Governance and Audit Committee – 25th October 2023

Subject: **COUNTER FRAUD UPDATE**

Classification: Unrestricted

Summary:

This report details:

- The Counter Fraud activity undertaken for the period of April 2023 to August 2023, including reported fraud and irregularities.
- An update on the Counter Fraud Action Plan for 2023/24 covering reactive and pro-active activity.

Recommendations:

The Governance and Audit Committee are asked to;

- Note the Counter Fraud Update report for 2023/24.
 - Note the progress of the Counter Fraud Action Plan for 2023/24.
-

Irregularity Referrals – 01 April 2023 to 31 August 2023

- 1.1 There were 174 irregularity referrals received for the reporting period of the 01 April 2023 to 31 August 2023. This is higher than previous years, with the majority of the increase in referrals relating to blue badges and No Recourse to Public Funds, indicating greater awareness within these areas. The distribution and characteristics of the irregularities reported to date are shown in the graphs in **Appendix A**.
- 1.2 There has been an actual loss of £83,898 within this period. All amounts are subject to recovery for the full amount due.
 - The majority of the loss - £62,916, was due to a social care provider continuing to invoice for services after the person had passed away.
 - There has been an actual loss of £11,605 due to pension payments being made to someone who had passed away with no next of kin.
 - A further £7,719 is due to salary overpayments caused by late notification by management.
 - There was a further loss due to a laptop being stolen by an ex-member of staff, which has subsequently been recovered by the Metropolitan Police and returned to the service.
- 1.3 There has been a potential loss of £290,284 with the majority of this (£202,568) due to a build-up of Direct Payment funds within a child's direct payment account and a failure to recover underspends over the past four years. The majority of the remaining is due to the potential loss caused by the misuse of blue badges.
- 1.4 Prevented total losses for this period are £246,603, again with the majority of this due to reclaiming the £202,568 sitting unused in a direct payment account. The remaining prevented loss is due to the removal of blue badges.

Supporting Living within Adult Social Care

- 1.5 The Counter Fraud Team have completed an investigation into the way providers invoice and the way KCC pays providers within the supporting living contract. The investigation was progressed following concerns being raised by social workers that several clients did not receive the level of care and support that had been commissioned.

- 1.6 The investigation looked at care and financial records held by the provider (who are commissioned in the region of £500,000 per year) to support the invoicing to KCC, and how reconciliation between the invoice and care being delivered is controlled within KCC. The review identified:
- There was no link between the care being delivered and the invoicing within the provider, therefore invoicing against what had been commissioned rather than what had been actually delivered;
 - The level of care being recorded by the provider was inconsistent and not recording all the care being delivered within the client contact records;
 - The number of care hours was at a level to deliver the required care;
 - There is no requirement within the contract for providers to capture care delivered or to provide performance information on the percentage of care hours delivered against what has been commissioned;
 - There is no reconciliation occurring on the invoicing submitted, against the care being delivered, this is due to no requirement for providers to provide supporting evidence when invoicing. Subsequently, it was concluded that a key financial control is not in place.
- 1.7 The above issues have been reported back to management, which have been accepted with relevant management actions to address them. This will require a contract variation and engagement with providers to progress. There has also been full cooperation from the provider to improve their process to ensure that the invoicing is against what has been delivered and not what has been commissioned.

East Kent Opportunities

- 1.8 Following a no assurance report issued by Thanet District Council on East Kent Opportunities (EKO), a review of financial and procurement arrangements at KCC has been completed. This has identified:
- The procurement of consultancy services by Economic Development has not followed any formal procurement processes with around £850,000 spent on consultancy services over the past 12 years.
 - There is no contract in place with the consultancy service, despite this being raised over two years ago.
 - There is a lack of metrics to inform the performance of the regeneration project.
- 1.9 Management (who have recently inherited this responsibility) have accepted the issues and provided relevant management actions to ensure compliance with the financial and procurement regulations.

Blue Badges

- 1.10 Proactive and reactive work continues to address the risk of blue badge misuse across Kent. During this period, there has been engagement with the County's Parking Managers to continue raising awareness of blue badge misuse. Enforcement days are being planned and delivered with others expected by the end of October 2023.
- 1.11 The Counter Fraud Team has received 116 blue badge referrals within the reporting period with 113 being received from District/ Borough Parking Teams. From the 116 referrals, this has resulted in 52 warning letters being issued, 11 closed due to insufficient evidence, one caution, 22 cases closed with no further action, two closed referred to partnering agencies and 28 cases open for further investigation. There has also been 86 Penalty Charge Notices issued by Parking Enforcement Teams.
- 1.12 There has been a successful prosecution of a blue badge misuse case that occurred in Gravesend. The person received a two-year conditional discharge, £35 victim surcharge and ordered to pay the full legal and investigation costs of £1,963.

1.13 Referral rates from District/Borough Councils continue to be mixed across the county and work continues to support parking teams in conducting effective enforcement action. Further enforcement days are in progress.

Table 1: Blue badge referrals by district/borough councils

| Parking Enforcement Area | Referral numbers – Apr 23 to Aug 23 | Parking Enforcement Area | Referral numbers – Apr 23 to Aug 23 |
|--------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Ashford BC | 37 | Maidstone BC | 14 |
| Canterbury CC | 12 | Sevenoaks DC | 3 |
| Dartford BC | 2 | Swale BC | 14 |
| Dover DC | 3 | Thanet DC | 3 |
| Folkestone & Hythe BC | 0 | Tonbridge and Malling BC | 2 |
| Gravesham | 21 | Tunbridge Wells BC | 2 |

No Recourse to Public Funds

1.14 The Counter Fraud Team supports the CYPE Directorate in conducting verification checks on those seeking support due to being destitute and having children. The Counter Fraud Team have received nine referrals within this reporting period.

1.15 The Counter Fraud Team are monitoring referral rates and working with CYPE to ensure that relevant information is captured at point of contact, the process is as efficient as possible, and resources are in place to meet any increase in demand.

National Fraud Initiative

1.16 The matches for the biennial National Fraud Initiative exercise have been released. **Appendix B** provides details of types of reports released and number of matches. This shows a considerable number (30,002) of matches to be cleared, these will be cleared according to their risk rating, with high and medium level matches taking priority. Sample testing of low-risk matches will occur to determine if the cost/ benefit of reviewing these matches.

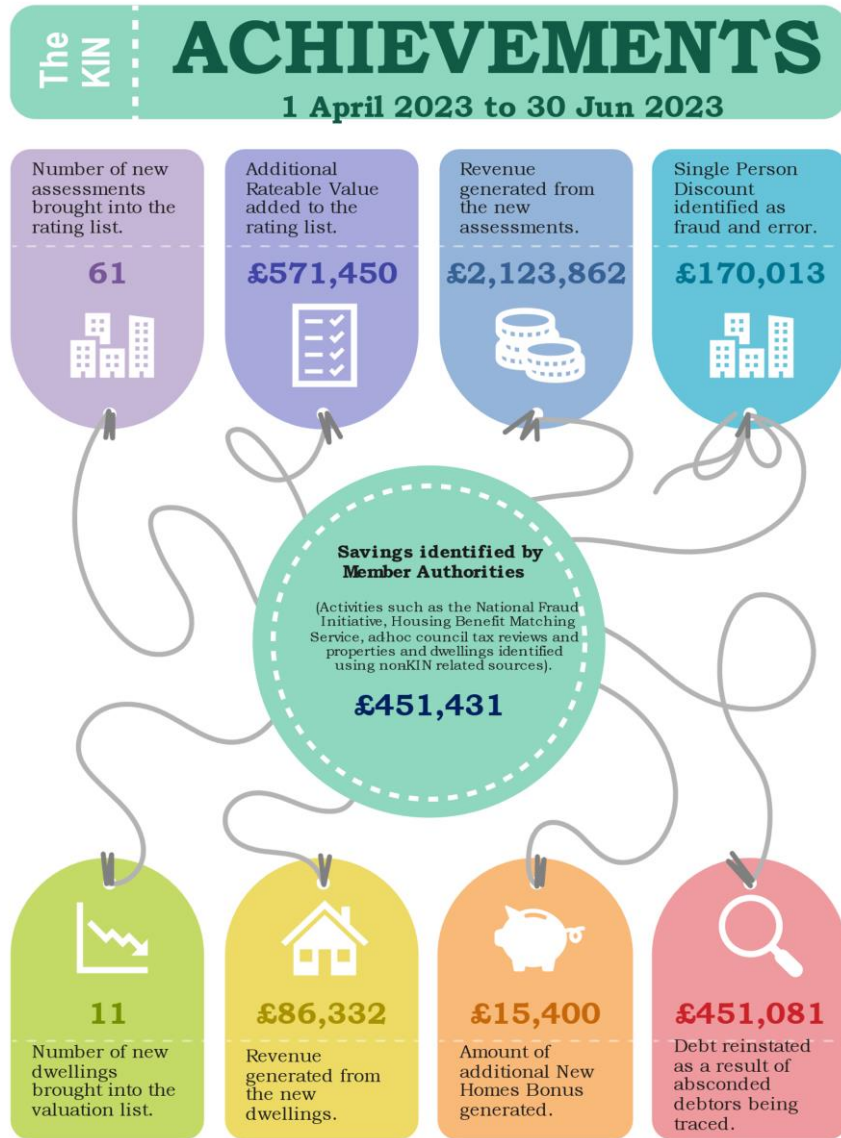
1.17 Match 172.1 Blue Badge to deceased data has been completed. The Cabinet Office applies an estimated saving of £650 for every cancelled badge, from 2887 matches received, 338 badges have been cancelled that were not already known about with an estimated saving of £219,700.

1.18 There are a number of cases that are with management/HR to investigate in relation to the payroll to payroll matches. Due to the process involved, these will take time to resolve.

1.19 Historically, there has been a number of false positives in the data matching (a false positive is where the conditions of the match has been met but due to data quality the condition is not realised). These are most common within the creditor data that has been received. Sample testing will determine the value of progressing of these matches against the resources needed to clear them.

Kent Intelligence Network (KIN)

1.20 The KIN continues to provide valuable support to the District/Borough Councils and the outcomes for the period 1 April 2023 to 30 Jun 2023, set out below, show the results and financial returns achieved.



1.21 61 commercial properties have been identified that were previously missing from the rating list. These properties have now been brought into the list by the Valuation Office Agency and, consequently, the businesses occupying these properties are now liable for business rates.

1.22 The additional business rates revenue generated from the identification of these missing properties is £2,096,749 (£2,123,862 including Medway), of which broadly 9% (£188,707) comes to KCC, is a combination of the following:

- The total amount of business rates billed for both the current financial year and previous financial years of £1,276,317 (£1,294,298 including Medway); and
- A 'future loss prevention' provision of 3 years of £820,432 (£829,564 including Medway). This represents the amount of additional income that would have been lost if the respective properties

had not been identified by the KIN.

1.23 It is also pertinent to highlight that on 30 June, there were 228 Business Rate cases with the Valuation Agency awaiting assessment/valuation, none of which are included in the figures stated above, and a further 304 cases which are currently under investigation by billing authorities.

1.24 The KIN also helps to identify dwellings missing from the valuation list and so far, 11 dwellings have been identified.

1.25 The additional council tax revenue generated from the identification of these missing properties is £86,332, of which broadly 73% (£63,022) comes to KCC, is a combination of the following:

- The total amount of council tax billed for both the current financial year and previous financial years of £29,746; and
- A 'future loss prevention' provision of 3 years of £56,586. This represents the amount of additional income that would have been lost if the respective dwellings had not been identified by the KIN.

1.26 It is also pertinent to highlight that on 30 June, there were 10 Council Tax cases with the Valuation Agency awaiting assessment/valuation, none of which are included in the figures stated above, and a further 21 cases which are currently under investigation by billing authorities.

1.27 Dwellings added to the valuation list also help to generate additional New Homes Bonus (NHB) for both Districts/Boroughs and KCC. It is estimated that the 11 dwellings identified will generate £15,400, of which 20% (£3,080) comes to KCC.

1.28 In respect of the £451,081 that has been traced from absconded council tax debtors, this will generate additional income for KCC, depending on the amount that is collected. Even if a bad debt provision of 30% is applied to the amount of debt brought back into recovery, KCC would broadly receive 73% of £315,756 and this would amount to £230,502.

1.29 In total, the financial benefit to KCC from the initiatives and successes detailed above amounts to £485,311 for the first quarter of 2023/24.

1.30 It is also important to highlight the investment made by KCC to help billing authorities achieve these outcomes. This investment is by way of an annual grant given to the respective billing authorities, the components for which are broken down as follows:

- A grant of £352,646 for the provision of additional resources to help carry out KIN related work, and also to assist with non-KIN related initiatives that help to increase the tax base and rates base.

- A grant of £19,710 towards a product that helps to trace absconded council tax debtors.

1.31 Solely in respect of the KIN related work, the return-on-investment to date (April to June) is £112,955 above the annual cost of this activity.

Counter Fraud Proactive Work

1.32 The Counter Fraud Proactive Work delivered for period April 23 to August 2023 includes:

- Fraud Awareness to East Kent Social Workers within CYPE;
- Fraud and Forgery/ Counterfeit awareness to Client Financial Services within Finance ;

- Attendance at KCC Serious and Organised Crime working group; and
- Attendance at Kent Fraud Panel meetings.

Counter Fraud Action Plan 2023/2024

1.33 Updates to the 2023/24 Counter Fraud Action Plan can be found at **Appendix C**. The balance between pro-active and re-active work continues to be a challenge within resource levels. The Counter Fraud Team continues to challenge and support management in managing their fraud and error risks.

Counter Fraud Resources

1.34 There has been a successful recruitment exercise to replace a Counter Fraud Specialist and there is currently a recruitment exercise to replace a Counter Fraud Technician (TMBC Lead) position.

1.35 The team comprises; 1FTE Counter Fraud Manager, 3FTE Counter Fraud Specialists, 2FTE Counter Fraud Technician, 0.8FTE Intelligence Officer and 1FTE Intelligence Assistant. These resources are there to support not only KCC but as part of our shared services with Tonbridge and Malling Council, as well as our external clients.

Conclusions

1.36 Reactive fraud work continues to address the irregularities being reported, with lessons learnt being reported back to management where there has been a lack of control or a control failure. There are instances where low level cases cannot be progressed due to resource pressures.

Recommendations

1.37 The Governance and Audit Committee are asked to:

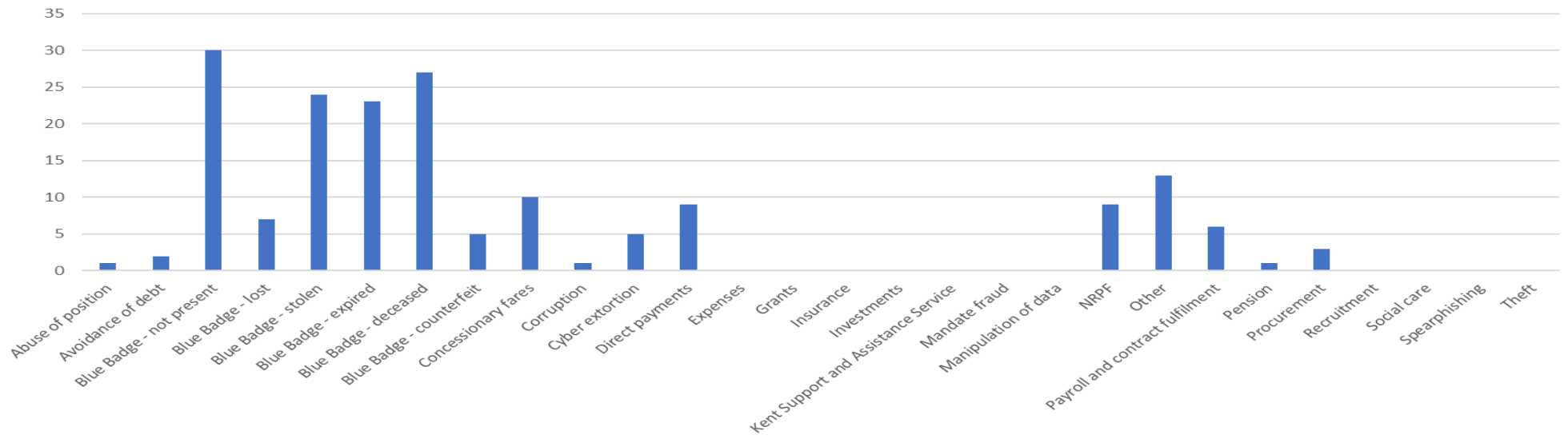
- Note the Counter Fraud Update report for 2023/24.
- Note the progress of the Counter Fraud Action Plan for 2023/24.

James Flannery, Counter Fraud Manager

October 2023

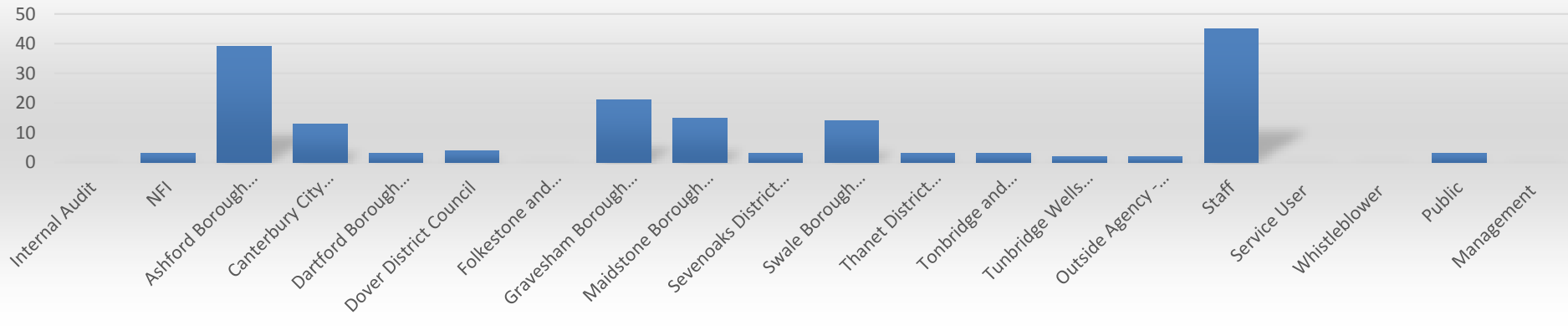
Appendix A: Fraud and Irregularity referrals April 2023 to August 2023 – Graphs

All fraud types

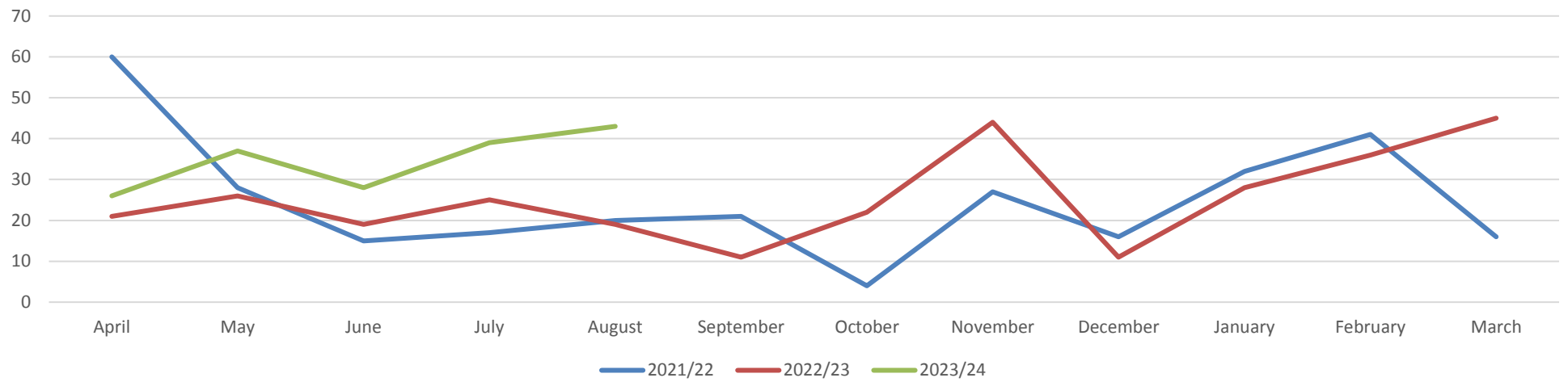


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Referrals by source



Number of referrals per month



Appendix B – National Fraud Initiative Outturn

| Report Title | Description of match | No of matches | Current Status |
|--|---|---------------|--|
| Pension/ Pension Gratuity/ Deferred Pension to DWP Deceased (52, 53) | The purpose of the match is to identify instances where an occupational pensioner has died but the pension is still being paid | 388 | In progress with pension service |
| Pension to Payroll (54,55,78) | To identify pensioners who may have gone back into employment that could result in an abatement of their pension | 436 | Cleared no impact due to conditions of pension allowing for employment with no abatement. |
| Payroll to Payroll (65,66, 67.2,68.1) | To identify individuals who may be committing employment fraud by failing to work their contracted hours because they are employed elsewhere or are taking long-term sickness absence from one employer and working for another employer at the same time | 87 | Open – Investigations continuing. |
| Payroll to Creditors (80, 81) | The match identifies instances where an employee and creditor are linked by the same bank account or the same address to identify employees with interests in companies with which your organisation is trading | 195 | Open – Investigations continuing. |
| Blue Badge to Blue Badge (170, 170.1, 172.7, 172.8, 172.9) | The purpose of this match is to identify people who may have committed fraud by obtaining more than one blue badge | 1,303 | Open – Investigations continuing. |
| Blue Badge to DWP Deceased (172.1) | Individuals who have a blue badge have been matched to deceased records. This will identify cases where a permit holder has died, but the local authority may not have been notified | 2,887 | Complete – Cabinet office applies an estimated saving of £650 for every cancelled badge 338 badges cancelled that were not already known about. Total estimated saving £219,700 |
| Blue Badge to Amberhill data (303, 304) | Identity fraud happens when fraudsters use a false identity or somebody else's identity details to support their criminal and deceptive activities | 2 | Open – Investigations continuing. |

| | | | |
|---|--|--------|--|
| Concessionary Travel Passes to DWP Deceased (172.2) | Individuals who have a concessionary travel pass have been matched to deceased records. This will identify cases where a permit holder has died, but the local authority may not have been notified | 5,286 | Completed – Cabinet office applies an estimated saving of £24 per cancelled pass. Total estimated saving £124,062 |
| Concessionary Travel Passes to Amberhill Data (306, 307) | Identity fraud happens when fraudsters use a false identity or somebody else's identity details to support their criminal and deceptive activities | 2 | Open – Investigations continuing. |
| Duplicate Creditors by creditor reference (700) | Duplicates identified in this match suggest poor creditor management as the system has permitted a creditor reference to be used more than once | 27 | Closed – no issues found. |
| Duplicate Creditors by creditor reference, name, address, account number (701, 702, 703, 707) | Duplicates identified in this match suggest poor creditor management as the system has permitted a creditor reference to be used more than once | 1,200 | Open – investigations continuing. |
| Duplicate records by amount and creditor reference (708) | This match highlights possible duplicate payments in excess of £1,000 that may have arisen as a result of poor controls or fraudulent activity by suppliers and/or staff | 17,374 | Open – investigations continuing. |
| VAT overpaid (709) | This report identifies instances where VAT may have been overpaid | 190 | Awaiting review |
| Duplicate records – creditors (711, 712, 713) | This match highlights possible duplicate payments for the same goods/services but to creditors with different reference numbers, which may have arisen as a result of poor controls or fraudulent activity by suppliers and/or staff | 483 | Open – investigations continuing. |
| Procurement – Payroll to Companies House (Director) | To identify potential undeclared interests that have given a pecuniary advantage | 142 | Open – investigations continuing. |

Appendix C: Counter Fraud Plan 2023/24

| Ref | Strategy link | Risk Area | Activity | Description | Update |
|--------|---------------|--|---|---|---|
| CFT-01 | Govern | Corporate Fraud | Policy, Strategy and Risk Review | Review each policy bi-annually, presented to CMT & G&A and once agreed to be communicated across KCC management via Kmail for managers. Expected policies to be reviewed: Anti-Fraud and Corruption Strategy Anti Bribery Policy Anti Money Laundering Policy Financial Regulations Whistleblowing Policy Spending the Councils Money To review any other policy that may have an inherent fraud, bribery & corruption risk | Anti-Fraud and Corruption Strategy Anti Bribery Policy Anti Money Laundering Policy Whistleblowing Policy Above be reported to the January 2024 G&A Committee |
| CFT-02 | Govern | All risk areas to support the prevention and detection of fraud and corruption | Relationship Management Strategy for Senior Stakeholders - Including Fraud, Bribery and Risk Assessments. | Ensure that the culture which is supported by Corporate Management Team and Governance and Audit Committee is embedded throughout the organisation through Counter Fraud attendance at relevant meetings and focus groups. | ASCH Supporting Living risk assessment plus management letter to raise issues. |
| CFT-03 | Prevent | All fraud risk areas faced by schools to support the prevention and detection of fraud | Proactive Fraud Exercise - Schools | Create and deliver a communication strategy to provide Fraud awareness sessions to school finance staff, senior leaders and governors. Including existing and emerging risks. As well as providing ad-hoc advice | Sessions booked for Autumn 23 and Spring 24 |
| CFT-04 | Prevent | Blue Badge fraud risk | Proactive Fraud Exercise - Blue Badges | Provide regular communication to parking managers to inform them of latest guidance, what's working well what needs improving, including the issuing of a quarterly newsletter. Provide enforcement awareness sessions to district CEOs. | Parking Manager meetings attended to provide engagement and feedback. 2 enforcement days in progress Q1 Newsletter issued. |

| | | | | | |
|---------------|---------|--------------------------------|--|---|--|
| | | | | | |
| CFT-05 | Prevent | Social Care fraud risks - ASCH | Financial Abuse Review | To progress a review of the approach taken by ASCH safeguarding on addressing financial abuse against vulnerable adults. | Support in place, challenge and support provided on a case by case basis, including engagement with Kent Police in progress. |
| CFT-06 | Prevent | Fraud Risks – ASCH | To deliver fraud culture work/ awareness sessions ASCH | To create and deliver a communication and engagement strategy that meets the need of the Services in addressing fraud/ financial crime risks. | In progress |
| CFT-07 | Prevent | Fraud Risks - CYPE | To deliver fraud culture work/ awareness sessions CYPE | To create and deliver a communication and engagement strategy that meets the need of the Services in addressing fraud/ financial crime risks. | In progress – Awareness session delivered to East Kent Social Worker teams. Fraud Awareness to East Kent Social Worker Team Risk Assessment and reporting requirements for overpayments within LAS payment system. |
| CFT-08 | Prevent | Fraud Risks - GET | To deliver fraud culture work/ awareness sessions across GET | To create and deliver a communication and engagement strategy that meets the need of the Services in addressing fraud/ financial crime risks. | In progress |
| CFT-09 | Prevent | Fraud Risks - CED/ DECD | To deliver fraud culture work/ awareness sessions across CED/ DECD | To create and deliver a communication and engagement strategy that meets the need of the Services in addressing fraud/ financial crime risks. | Awareness to Client Financial Affairs on fraud awareness and forgery/counterfeiting of documents. |
| CFT-10 | Prevent | No Recourse to Public Funds | Review of CF Process | To review the guidance, forms, and controls in place to enable effective assessments of someone's destitution. Review NRPF applications where these financial checks are required. | In progress- review of process completed, new financial assessment form completed and passed to service for review and implementation. NRPF checks being completed |

| | | | | | |
|---------------|-------------|--|--|--|--|
| CFT-11 | Prevent | All risk areas to support the prevention and detection of fraud and corruption | Fraud Awareness | Agile awareness sessions to be delivered in conjunction with emerging risks | Bespoke engagement to: CYPE quality assurance Shared Lives management GET Economic Development Management |
| CFT-12 | Pursue | Payroll Pension Blue Badge Concessionary fares Trade Creditors | Progression of NFI Data Matches | Coordinate the Council's and its LATCO's participation in the National Fraud Initiative, including the monitoring of matches being completed by the relevant team. | In progress – See Appendix B |
| CFT-13 | Pursue | Corporate Fraud | Kent Intelligence Network | Actively participate in the Kent Intelligence Network and develop data matching proposals to increase detection of fraud at KCC and across Kent authorities. | In progress – update included in report. |
| CFT-14 | Protect | Counter Fraud Profession | Professional standards | Engagement with the Cabinet Office on the Counter Fraud Profession | Practitioners group updating standards. Onboarding Managers into profession being progressed. |
| CFT-15 | Protect | All risk areas to support the prevention and detection of fraud and corruption | Supporting Audit on specific audits where there is a fraud risk, through planning, fieldwork and reporting stages as required. | Provide advice and support on key fraud controls in specific audits. | In progress- Engagement plans reviewed. |
| CFT-16 | Acknowledge | All fraud risk areas | Reactive Investigations | To manage and complete investigations into the financial irregularities reported to Internal Audit & Counter Fraud. Including criminal, civil and where needed disciplinary investigations. Providing management with any areas of improvements needed to reduce the risk of fraud or error occurring again. | In progress – outputs reported in main report. |

| | | | | | |
|---------------|-------------|----------------------|----------------|--|--|
| CFT-17 | Acknowledge | All fraud risk areas | Data Analytics | Providing advice/ guidance and data analytical support in order to identify fraud and error occurring. | Reviewed Supporting Living information to inform if data analytics can be used for reconciliation, data structure not in place to enable data analytics. |
|---------------|-------------|----------------------|----------------|--|--|

KCC Annual Customer Feedback Report 2022/23

By: Amanda Beer – Deputy Chief Executive
To: Governance and Audit Committee
Date:
Subject: KCC Annual Customer Feedback Report 2022/23
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 annual report on compliments, comments and complaints.
- 1.2 Overall complaints volumes are up slightly this year, there were a number of key changes this year that drove complaints in a number of areas. These included Homes for Ukraine, SEND and changes to transport provision.
- 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 5 years, enabling us to breakdown data easily, understand trends and react to evolving issues.
- 2.2 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.
- 2.3 Although not relevant to the year 2022/23, there have been some changes that have been implemented since April 2023, which will change the way in which the Council works in regard to complaints handling. A team has been formed to manage feedback centrally, the focus of the team will be on clearing the backlog of complaints with a view to improving timeliness in the long term. In addition, the team will be focusing on providing good quality responses and consistency of service to our residents and service users.

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 |
|----------------|----------------------|------------|-------------|---|
| 2022/23 | 5580 | 273 | 1162 | 229 |
| 2021/22 | 5210 | 285 | 1208 | 182 |
| Difference | 370 | -12 | -46 | 47 |
| % difference | 7% | -4% | -4% | + 26% |

- 3.5 We saw an increase in the volumes of cases in 2022/23, there were a number of factors behind the increase in cases, these include the introduction of the Homes for Ukraine scheme, SEND Ofsted visit and changes to bus provision countywide.
- 3.6 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.
- 3.7 There has also been significant backlog in responding to complaints in CYPE and Highways & transportation, which is impacting on both volumes and timescales.

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 |
|----------------|-------------------------------|-------------------------------------|----------------------------------|--|-------------|
| 2022/23 | 958 | 1240 | 3231 | 151 | 5580 |
| 2021/22 | 744 | 1049 | 3238 | 179 | 5210 |
| Difference | 214 | 191 | -7 | -28 | 370 |
| % difference | 29% | 18% | <1% | -16% | 7% |

- 3.8 There were a number of changes to the way in which services were delivered in this year. This included changes bus provision countywide which will be reflected in Growth, Environment and Transport (GET) figures.
- 3.9 Adult Social Care and Health (ASCH), saw a significant increase from the previous year there were remarked increase in Blue Badge complaints which were likely due to the number of renewals that were due in the year and subsequent delays in processing. ASCH saw increases across the board all of which contributed to the general rise in this directorate.
- 3.10 Whilst Children, Young People and Education (CYPE) saw a significant increase in complaints overall. Much of the increase in cases here can be attributed to Special Educational Needs (SEN). Work is currently ongoing to reduce the backlog of complaints awaiting responses in this area.
- 3.11 All directorates bar Strategic and Corporate Services (SCS) the increase in SCS in the previous year was largely attributed to 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.
- 3.12 In 2022/23 complaint volumes were lower but still relatively high for SCS as the directorate led on the Council's response to the Homes for Ukraine scheme.
- 3.13 Overall, we have seen a 7% increase 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 |
|--------------|------------------------------|--------------------------------------|-----------------------------------|----------------------------------|
| 2022/23 | 14 | 220 | 160 | 30 |
| 2021/22 | 0 | 140 | 145 | 15 |
| Difference | 14 | 76 | 15 | 15 |
| % difference | | 54% | 10% | 100% |

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

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

3.14 We have seen a significant increase 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.

3.15 Cases closed by Directorate at Stage 1

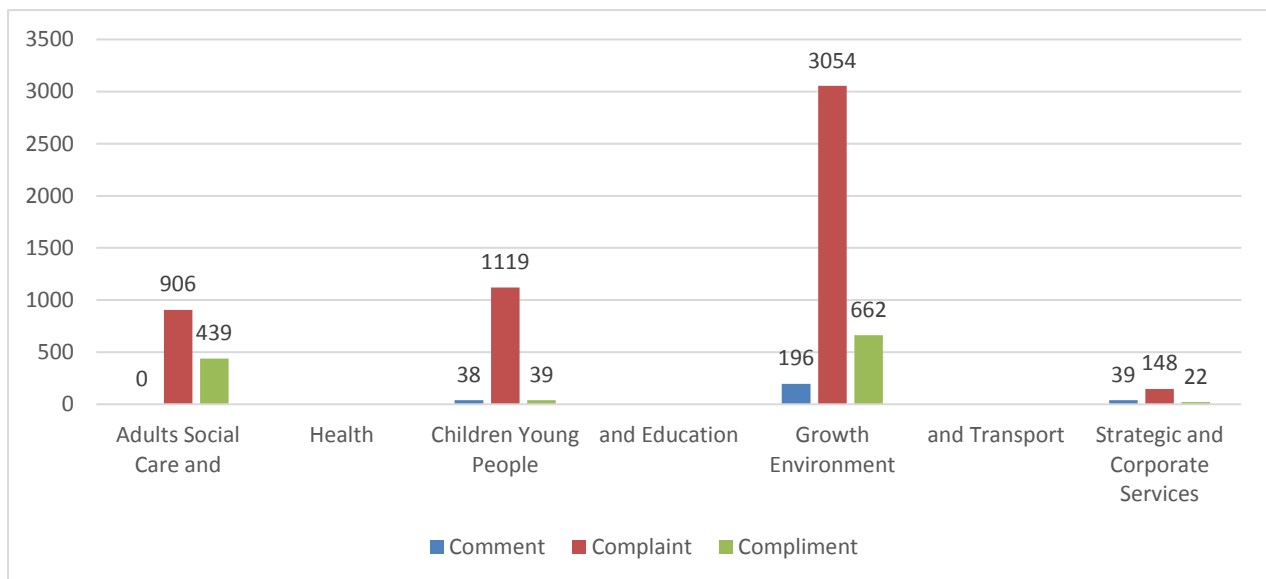
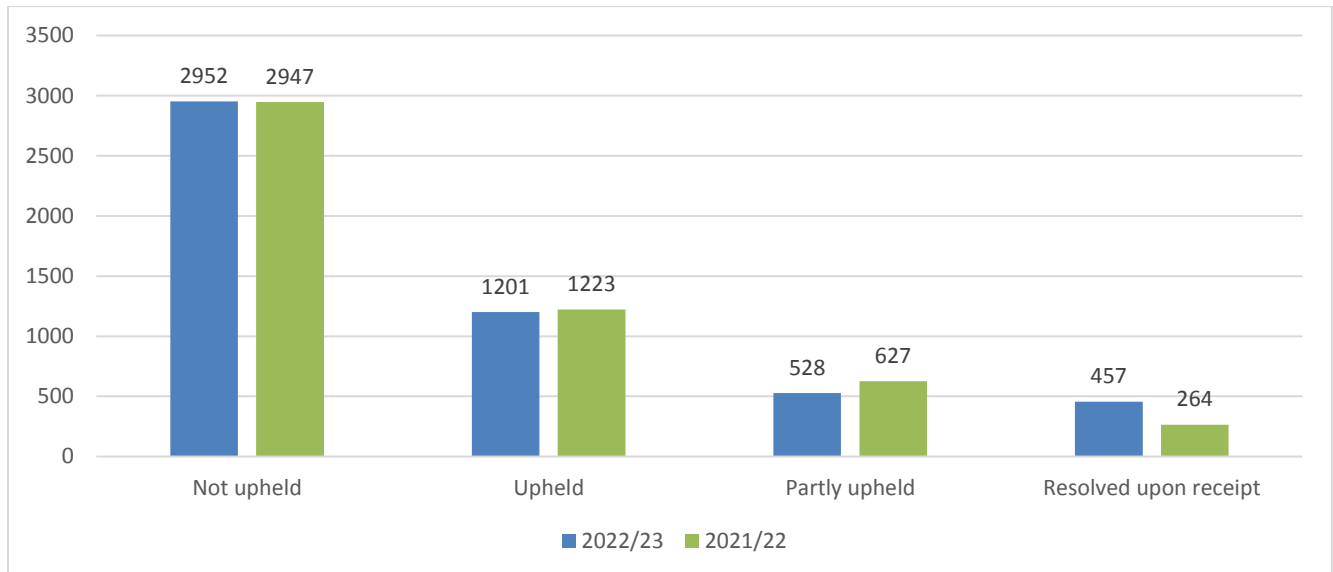


Table 4 - Cases closed by Directorate at Stage 1

| | Comment | Complaint | Compliment | Total |
|-------------------------------------|----------------|------------------|-------------------|--------------|
| Adults Social Care and Health | 0* | 906 | 439 | 1345 |
| Children Young People and Education | 38 | 1119 | 39 | 1196 |
| Growth Environment and Transport | 196 | 3054 | 662 | 3912 |
| Strategic and Corporate Services | 39 | 148 | 22 | 209 |
| Total for 2022/23 | 273 | 5227 | 1162 | 6662 |
| Total for 2021/22 | 285 | 5114 | 1208 | 6607 |
| Difference | -12 | 113 | -46 | 55 |
| % Difference | -4% | 2% | -4% | <1% |

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

3.16 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 |
|----------------|-------------|-------------|---------------|-----------------------|
| 2022/23 | 2952 | 1201 | 528 | 457 |
| % | 56% | 23% | 10% | 9% |
| 2021/22 | 2947 | 1223 | 627 | 264 |
| % | 59% | 24% | 12% | 5% |

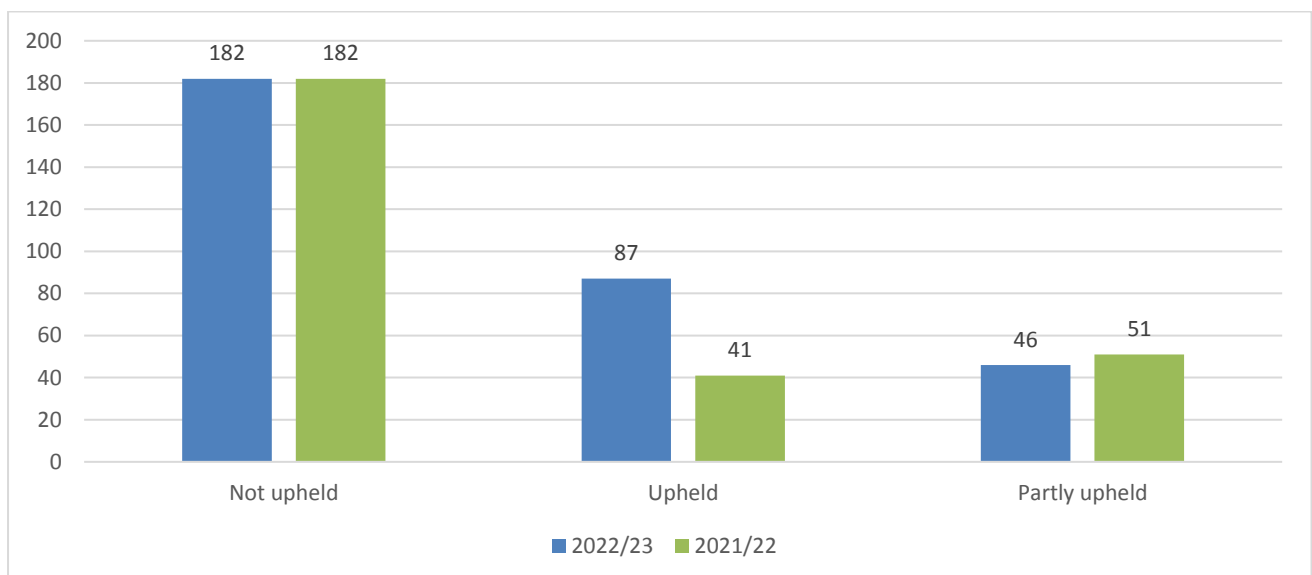
3.17 The number of cases upheld versus not upheld remains steady. With a 1 to 3% difference retrospectively.

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

A not upheld example may include where a resident complains about KCC policy, but that policy had been through consultation, comments had been considered at committee meetings and a key decision had been made to implement the policy.

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 complain about staff behaviour and this was found to be upheld, then this would cause the overall complaint to be partially upheld.

3.19 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 |
|----------------|------------|------------|---------------|-----------------------|
| 2022/23 | 182 | 87 | 46 | 0 |
| % | 59% | 28% | 15% | 0% |
| 2021/22 | 182 | 41 | 51 | 0 |
| % | 66% | 15% | 19% | 0% |

3.20 There is a marked increase in the number of complaints upheld at stage 2, however 79% of these were already upheld or partially upheld at stage 1 which demonstrates that in the majority of cases customers are exercising their right to escalate to stage 2. This may be because they were unhappy with the proposed remedies offered at stage 1 or because they wanted to take their complaint further, either to stage 2 or Ombudsman. 14% of cases were overturned and the remainder bypassed stage one where conversations had already been going on.

3.21 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 |
|----------------|-------------------|---|-------------------|----------------|
| 2022/23 | 2634 | 14708 | 247 | 0 |
| 2021/22 | 1682 | 13364 | 208 | 10 |
| Difference | 952 | 1344 | 39 | -10 |

3.22 There is a significant increase in Member/MP enquiries two high volume services (SEN and Highways & Transportation) are incurring substantial backlogs in terms of responses which often leads to frustration from residents who then contact their MP or local Members for assistance.

3.23 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 | Service not provided | Staff Conduct cause | Value for money | Impact of major incident | Issues with service | Total |
|-------|------------------------------|-------------------------------|-------------------------|-------------|----------------------|-----------------|-----------------|----------------------|---------------------|-----------------|--------------------------|---------------------|-------------|
| 22-23 | Total | 794 | 205 | 62 | 1067 | 3 | 2131 | 718 | 197 | 32 | 5 | 171 | 5411 |
| | % of total complaints | 15% | 4% | 1% | 20% | <1% | 39% | 13% | 4% | 1% | <1% | 4% | |
| 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% | |

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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 ‘quality of service’ which accounted for 39% of cases. Table 10 shows the breakdown of the root causes of these complaints where they were upheld. This was newly added last year as previously the ‘issues with service’ topic did not give sufficient detail, that category was split into ‘Quality of Service’ and ‘Service not Provided’.

KCC Annual Customer Feedback Report 2022/23

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 | 46 | 113 | 66 | 18 | 243 | 20% |
| Equalities & regulatory | 5 | 12 | 8 | 2 | 27 | 2% |
| Policy and procedure | 74 | 29 | 82 | 2 | 187 | 15% |
| Quality of service | 54 | 185 | 211 | 14 | 464 | 38% |
| Service not provided | 15 | 122 | 68 | 5 | 210 | 17% |
| Staff Conduct cause | 7 | 7 | 35 | 6 | 55 | 4% |
| Value for money | 1 | 1 | 1 | 0 | 3 | <1% |
| Issues with service | 3 | 7 | 34 | 0 | 44 | 4% |
| Total | 205 | 476 | 505 | 47 | 1233 | |
| % | 17% | 39% | 41% | 4% | | |

*table only includes upheld complaints and not those partially upheld

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

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 75%** of complaints within corporate timescales which compares to **77%** 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, particularly in a number of key areas of the organisation where there are already existing pressures such as SEN and where there were gaps in staffing for example Highways & Transportation. There has also been significant change in customer habits/behaviours, particularly due to financial pressures.
- 4.3 This year, of those 25% that were not answered in timescale, **15%** of the total number of complaints received, were not responded to within timescale as a result of either staff availability or workload. This reason significantly increases in those services where there is already pressure.

Table 11 - Delay reasons

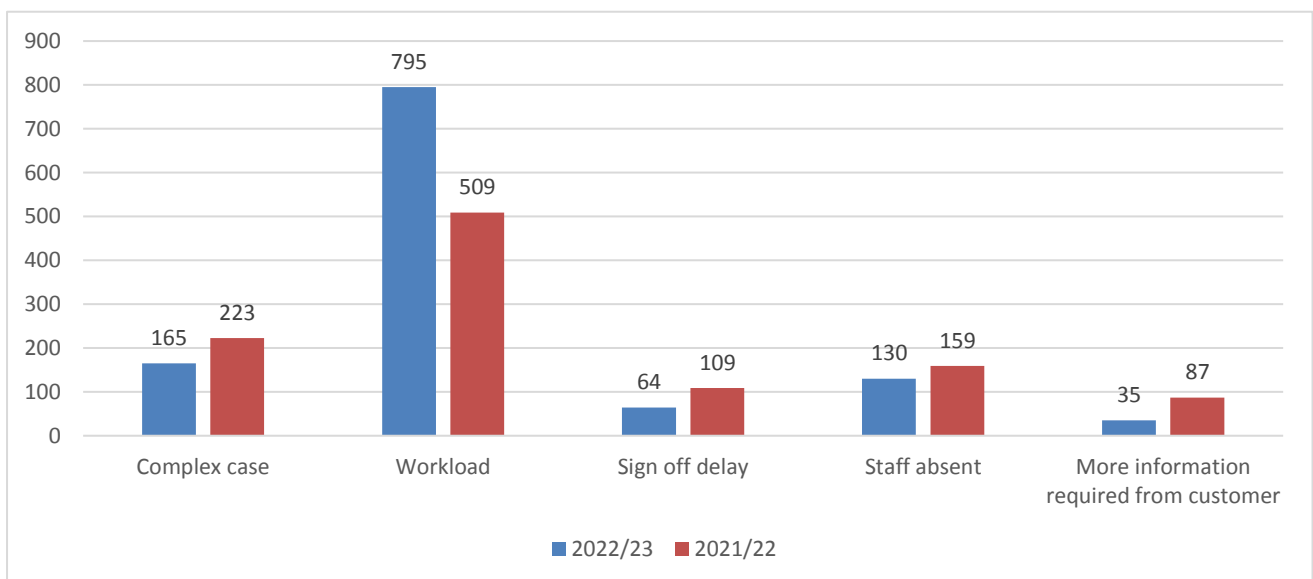


Table 12 - Top five overall delay reasons

| | Complex case | Workload | Sign off delay | Staff absent or unavailable | More information required from customer |
|-----------------------------|---------------------|-----------------|-----------------------|------------------------------------|--|
| 2022/23 | 165 | 795 | 64 | 130 | 35 |
| 2021/22 | 223 | 509 | 109 | 159 | 87 |
| % of total complaints rec'd | 3% | 15% | 1% | 2% | 1% |

- 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 team continue to work hard with the service to reduce the number of complaint responses that are delayed.
- 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 health services. 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 467 cases closed were recorded as late due to workload. The impact of the Ofsted report and the revisit in October 2022 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 provision of buses across the county, not all of which were as a result of KCC but had an impact, nonetheless. The team responsible for managing responses were significantly impacted by staff absences and vacancies and therefore performance was lower than expected.

Table 13 - Top three delay reasons by directorate**Adults Social Care and Health**

| | Complex case | Workload | Sign off delay |
|--|---------------------|-----------------|-----------------------|
| 2022/23 | 88 | 54 | 28 |
| 2021/22 | 55 | 24 | 38 |
| % of total complaints rec'd by Directorate | 10% | 6% | 3% |

Children Young People and Education

| | Workload | Sign off delay | Complex case |
|--|-----------------|-----------------------|---------------------|
| 2022/23 | 467 | 31 | 25 |
| 2021/22 | 241 | 63 | 56 |
| % of total complaints rec'd by Directorate | 42% | 3% | 2% |

Growth Environment and Transport

| | Workload | Staff absent or unavailable | Complex Case |
|--|-----------------|------------------------------------|---------------------|
| 2022/23 | 271 | 107 | 50 |
| 2021/22 | 226 | 120 | 109 |
| % of total complaints rec'd by Directorate | 9% | 4% | 2% |

Strategic and Corporate Services

| | Workload | Sign off delay | Complex Case |
|--|-----------------|-----------------------|---------------------|
| 2022/23 | 5 | 4 | 2 |
| 2021/22 | 9 | 1 | 4 |
| % of total complaints rec'd by Directorate | 3% | 3% | 1% |

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 2021/2022 & 2022/2023.

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 |
|------------------|------------|-----------|------------|-------------------------------|------------|--|---------------|
| 2022/23 | 13% | 2% | 33% | 2% | 50% | <1% | <1% |
| Volume | 969 | 133 | 2396 | 119 | 3598 | 10 | 13 |
| 2021/2022 | 17% | 3% | 35% | 2% | 44% | <1% | <1% |
| Volume | 1160 | 189 | 2381 | 108 | 2992 | 11 | 14 |

- 5.3 The above table shows that there has been an increase in the submitting of compliments, comments and complaints via our online systems.
- 5.4 There is a significant proportion of complaints now being submitted via digital methods. 83% of feedback received is now arriving digitally either by email or via the online form.

6. Compensation across all complaints received by KCC

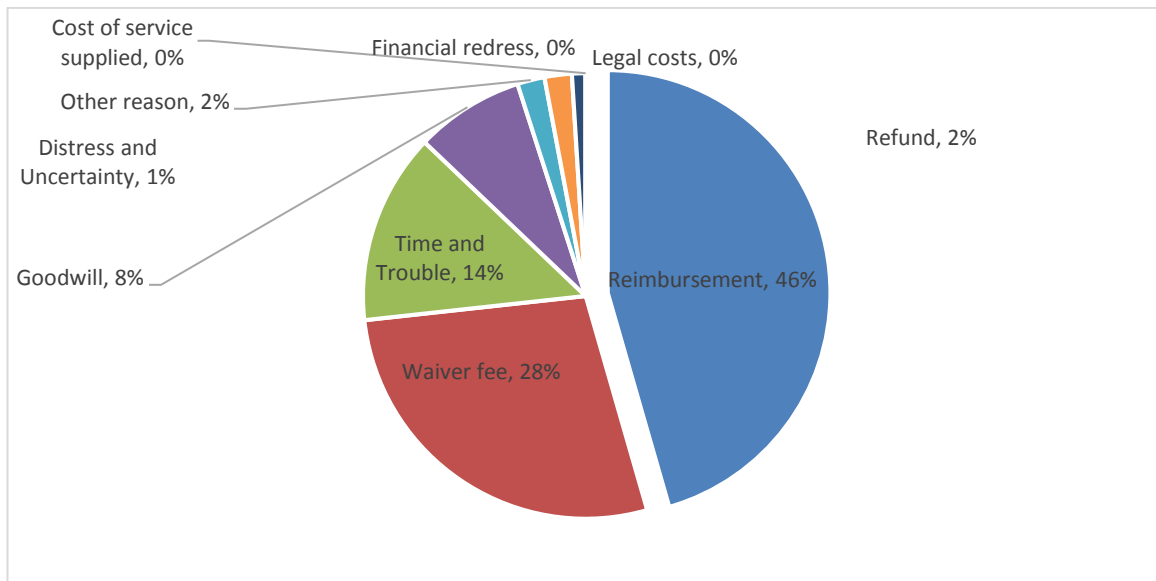
- 6.1 In 2022/23, £178,714.66 was paid in compensation, settlements, changes to the amount we charge and waived charges as a result of complaints to the organisation this includes;
- £116,960.06 has been paid or waived as part of local resolution in Adult Social Care and Health. This figure also includes 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.
 - £758.20 has been paid out for Growth, Environment and Transport. £20 Pensions reimbursement.

KCC Annual Customer Feedback Report 2022/23

- £60,976.40 has been paid out for Children, Young People and Education Directorate including Community Learning and Skills and Children Social Work Services
- £63,926.40 of the payments above were made following Local Government and Social Care Ombudsman Decisions found against KCC.

6.2 This is a decrease of £66,696.12 from 2021/22 when £245,410.82 was paid out in settlements or through waived charges.

Table 15 - Compensation complaint reason chart



| Reason | % |
|--------------------------|-----|
| Reimbursement | 46% |
| Waiver fee | 28% |
| Time and Trouble | 14% |
| Goodwill | 8% |
| Other reason | 2% |
| Refund | 2% |
| Distress and Uncertainty | 1% |
| Cost of service supplied | <1% |
| Financial redress | <1% |
| Legal costs | <1% |

6.3 It is important to note that monies paid out during the 2022/23 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 2022/23

- 7.1 During 2022/23 the Monitoring Officer has responded to 2 complaints of alleged misconduct of the breach of the Elected Member Code of Conduct.

Table 16

| Number of Complaints | | | Outcome |
|----------------------|----------|---------|---|
| 2022/23 | 2021/222 | 2020/21 | |
| 2 | 9 | 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 publicly 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 The Ombudsman has noted that the way in which they choose which complaints they will investigate has changed, leading to a higher number of complaints being upheld vs not upheld. The below is the Ombudsman’s explanation of the change.
- 9.3 “Over the past two years, we have reviewed our processes to ensure we do the most we can with the resources we have. One outcome is that we are more selective about the complaints we look at in detail, prioritising where it is in the public interest to investigate. While providing a more sustainable way for us to work, it has meant that changes in uphold rates this year are not solely down to the nature of the cases coming to us. We are less likely to carry out investigations on ‘borderline’ issues, so we are naturally finding a higher proportion of fault overall.

Our average uphold rate for all investigations has increased this year and you may find that your organisation’s uphold rate is higher than in previous years. This means that comparing uphold rates with previous years carries a note of caution. Therefore, we recommend comparing your authority’s uphold rate with that of similar organisations, rather than previous years, to better understand performance.”

- 9.4 During 2022/23 KCC received a total of **229** decisions from the Ombudsman this included 62 referred back for local resolution. The full letter and Ombudsman statistics can be found in Appendix B.
- 9.5 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.
- 9.6 The Ombudsman’s report noted that the national average upheld is **66%** of complaints they investigated; this is down nationally from 71% last year.
- 9.7 The average upheld rate for other County Councils has increased from 71% to 80%. Kent County Council’s average is **87%**; this was an increase from last year’s 68% upheld. However, as noted in 9.3, the Ombudsman was expecting an increase following a change in the way cases are progressed.

- 9.8 In **8%** of upheld cases the Council had provided a satisfactory remedy before the complaint reached the Ombudsman. This compares to an average of 6% in similar authorities.
- 9.9 The Ombudsman found the highest proportion of complaints upheld nationally to be in Education and Children’s services, of 243 cases received by the LGSCO for Kent, 146 were about Education and Children Services. Nationally 92% of complaints regarding SEN provision and EHC plans are upheld.

10. Public Report

10.1 The Council received no public reports in 2022/23.

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 | Environ mental services | Highways and transport | Housing | Planning and Development | Other | Total |
|-----------------------|---------------------|------------------|------------------------------|-----------------------------------|-------------------------|------------------------|----------|--------------------------|----------|------------|
| <u>2022/23</u> | 67 | 1 | 4 | 146 | 5 | 19 | 0 | 0 | 1 | 243 |
| 2021/22 | 55 | 0 | 3 | 96 | 7 | 20 | 0 | 1 | 0 | 182 |
| 2020/21 | 56 | 0 | 4 | 79 | 5 | 9 | 1 | 1 | 1 | 156 |

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 | | | | | |
| 2022/23 | 53 | 8 | 7 | 91 | 8 | 62 | 229 |
| 2021/22 | 65 | 30 | 0 | 75 | 2 | 10 | 182 |
| 2020/21 | 40 | 14 | 0 | 49 | 9 | 40 | 152 |

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. The number closed after initial enquiries has increased significantly, these are cases where the Ombudsman has reviewed our responses and has decided not to investigate further.

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 | 4 | 0 | 25 | 8 | 37 |
| Kent Test/ School Admission appeals | 1 | 0 | 2 | 0 | 3 |
| Home to School Transport/ Free School Meals | 4 | 2 | 3 | 1 | 10 |
| Special Educational Needs | 29 | 0 | 12 | 29 | 70 |
| The Education People | 1 | 0 | 0 | 0 | 1 |
| Community Learning and Skills | 0 | 0 | 0 | 0 | 0 |

| | | | | | |
|--------------|-----------|----------|-----------|-----------|------------|
| Total | 39 | 2 | 42 | 38 | 121 |
|--------------|-----------|----------|-----------|-----------|------------|

Children Social Care - Upheld example – 21 012 369

Complaint

1. Mr X complained that the Council:
 - a. failed to address the impact of the faults found in the independent investigation of his complaint about children's social care and provide a suitable remedy;
 - b. failed to carry out actions agreed at the end of the complaints process; and
 - c. took too long to complete the complaints process.
2. As a result he says he and his family have missed out on support they should have received.

Outcome

We find there were some flaws and delays in the assessment process that the Council has not fully recognised in its response to the complaint so far. The Council has agreed a further remedy.

Education - Not upheld example – 22 009 075

Complaint:

Mrs M complains about the Council wrongly refusing her daughter travel assistance after the school she applied for closed and she chose a school which was not her nearest under its policy; as a result, this causes her stress and financial hardship as she now meets the cost of travel to school.

Outcome

We found no fault by the Council on Mrs M's complaint about it wrongly refusing her daughter travel assistance. The Council correctly assessed her application, and the appeal panel correctly considered all the evidence submitted before deciding to refuse it.

Education - Upheld example – 22 007 365

Complaint

Mrs X complained the Council failed to provide suitable alternative education when her son, B, was too unwell to attend school.

Outcome

We find the Council was at fault for failing to provide B with alternative education. This caused distress to Mrs X and B has been out of education. To address the injustice caused by fault, the Council has agreed to apologise, make symbolic payments and remind staff of the relevant guidance.

Table 20 - Growth, Environment and Transport

| | Upheld | Not upheld | Closed: out of jurisdiction/no further action or withdrawn | Premature | Total |
|--|---------------|-------------------|---|------------------|--------------|
| Environment, Planning and Enforcement | 0 | 1 | 3 | 1 | 5 |
| Growth and Communities | 0 | 0 | 2 | 0 | 2 |
| Highways, Transportation and Waste | 0 | 1 | 15 | 3 | 19 |
| Total | 0 | 2 | 20 | 4 | 26 |

Not Upheld example – 22 002 987

Complaint:

1. Miss X complains the Council:
 - Installed a bright LED light bulb in the streetlight across the road from her;
 - Expected her to pay for any shield to be fitted to the light;
 - Failed to understand the issue she raised.
2. Miss X says the light from the LED bulb has caused her to have sleep problems which impacted her health.

Outcome

We do not uphold Miss X’s complaint about the Council’s installation of an LED light bulb in a streetlight outside her home and management of her complaint. The issue is now resolved, and no further action is required.

Table 21 - Strategic and Corporate Services

| Upheld | Not upheld | Closed: out of jurisdiction/no further action or withdrawn | Premature | Total |
|---------------|-------------------|---|------------------|--------------|
| 0 | 0 | 4 | 0 | 4 |

Table 22 - Adult Social Care and Health

| Upheld | Not upheld | Closed: out of jurisdiction/no further action or withdrawn | Premature | Total |
|---------------|-------------------|---|------------------|--------------|
| 14 | 3 | 25 | 6 | 48 |

Not Upheld example – 22 010 647

Complaint:

Mrs X, on behalf of her adult son, Mr Y, complains the Council has refused to cover the cost of an increase in his care provider’s hourly rate, putting his current care package at risk. She says Mr Y’s mental health has deteriorated, causing the family distress and uncertainty. They are worried he will lose the bespoke support which has worked well for him for many years.

Outcome

We have not found the Council at fault for how it made its decision not to increase its direct payments for Mrs X’s son.

Upheld example – 21 018 229

Complaint:

The complainant, who I am calling Mr X, complains the Council delayed the assessment of need for care and support. Mr X’s mother, who I am calling Mrs Y, has brought the complaint on his behalf. She says:

- The Council knew about Mr X’s need for care and support in September 2020 but did not complete his assessment until May 2022; and
- Because of the delay he missed out on the care and support he needed.

Outcome

Mr X complained the Council delayed the assessment of his need for care and support. We have found fault by the Council causing injustice. The Council has agreed to remedy this by apologising to Mr X and Mrs Y.

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 |
|------------------------------------|---------|
| Formal apology | 625 |
| Explanation | 397 |
| Discuss at team meeting | 242 |
| Provided service requested | 193 |
| Arrange staff training or guidance | 186 |
| Change or review communications | 122 |

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

14 RECOMMENDATIONS

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

Report Author:

Pascale Blackburn-Clarke
 Customer Experience and Engagement Manager
 03000 417025
 Pascale.blackburn-clarke@kent.gov.uk

Relevant Director:

Amanda Beer, Deputy Chief Executive
 03000 415835
 Amanda.beer@kent.gov.uk

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* |
|----------------|-------------------------------|-----------------|--------------------|--|
| 2022/23 | 1240 | 38 | 39 | 121 |
| 2021/22 | 1049 | 42 | 91 | 96 |
| 2020/21 | 867 | 51 | 77 | 78 |

The below table compares the number of complaints received in 2022/23 with those received in 2021/22 and 2020/21

| Service | 2020/21 | 2021/22 | 2022/23 |
|---|----------------|----------------|----------------|
| Specialist Children Service/Children’s Social Work Services | 698 | 825 | 991 |
| Community Learning & Skills (was Adult Education) | 24 | 46 | 81 |
| Education Services | 143 | 176 | 155 |
| The Education People | 2 | 2 | 13 |
| Total Complaints | 867 | 1049 | 1240 |

Growth, Environment and Transport

All Feedback Reported

| | Complaints (Stage one) | Comments | Compliments | Resolved Local Government and Social Care Ombudsman enquiries & complaints* |
|----------------|-------------------------------|-----------------|--------------------|--|
| 2022/23 | 3231 | 196 | 662 | 26 |
| 2021/22 | 3238 | 226 | 703 | 28 |
| 2020/21 | 3585 | 252 | 750 | 15 |

The below table compares the number of complaints received in 2022/23 with those received in 2021/22 and 2020/21

| Service | 2019/20 | 2020/21 | 2022/23 |
|--|----------------|----------------|----------------|
| Environment, Planning and Enforcement | 242 | 172 | 145 |
| Economic Development | 1 | 4 | 4 |
| Highways and Transportation and Waste Management | 3106 | 2791 | 2822 |
| Libraries, Registrations and Archives | 236 | 271 | 260 |
| Total Complaints | 3585 | 3238 | 3231 |

KCC Annual Customer Feedback Report 2022/23

Adult Social Care and Health

All Feedback Reported

| | Complaints (Stage One) | Comments | Compliments | Resolved Local Government and Social Care Ombudsman enquiries & complaints* |
|----------------|------------------------|----------|-------------|---|
| 2022/23 | 958 | 0 | 375 | 48 |
| 2021/22 | 744 | 0 | 375 | 55 |
| 2020/21 | 754 | 252 | 512 | 53 |

The below table compares the number of complaints received in 2022/23 with those received in 2021/22 and 2020/21

| Service | 2020/21 | 2021/22 | 2022/23 |
|------------------------------|------------|------------|------------|
| Adult Social Care and Health | 754 | 744 | 958 |
| Total Complaints | 754 | 744 | 958 |

KCC Annual Customer Feedback Report 2022/23

Strategic and Corporate Services

All Feedback Recorded

| | Complaints (Stage One) | Comments | Compliments | Resolved Local Government and Social Care Ombudsman enquiries & complaints* |
|---------|------------------------|----------|-------------|---|
| 2022/23 | 151 | 39 | 22 | 4 |
| 2021/22 | 179 | 17 | 39 | 3 |
| 2020/21 | 169 | 52 | 24 | 4 |

The below table compares the number of complaints received in 2022/23 with those received in 2021/22 and 2020/21

| Service | 2020/21 | 2021/22 | 2022/23 |
|--|---------|---------|---------|
| Finance | 28 | 39 | 15 |
| FOI | 3 | 13 | 15 |
| Gateways and Contact Point | 33 | 64 | 41 |
| Strategy, Policy, Relationships and Corporate Assurance | - | - | 34 |
| Insurance | 1 | 0 | 11 |
| Infrastructure, Property and Total Facilities Management | 28 | 16 | 11 |
| Public Health | 59 | 34 | 1 |
| Other | 17 | 13 | 10 |

KCC Annual Customer Feedback Report 2022/23

| | | | |
|-------------------------|------------|------------|------------|
| Total Complaints | 169 | 179 | 151 |
|-------------------------|------------|------------|------------|

Appendix B

Ombudsman Letter

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19 July 2023

By email

Ms Beer
Interim Chief Executive
Kent County Council

Dear Ms Beer

Annual Review letter 2022-23

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 2023. The information offers valuable insight about your organisation's approach to complaints. As always, I would encourage you to consider it as part of your corporate governance processes. 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.

The end of the reporting year, saw the retirement of Michael King, drawing his tenure as Local Government Ombudsman to a close. I was delighted to be appointed to the role of Interim Ombudsman in April and look forward to working with you and colleagues across the local government sector in the coming months. I will be building on the strong foundations already in place and will continue to focus on promoting improvement through our work.

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.

Over the past two years, we have reviewed our processes to ensure we do the most we can with the resources we have. One outcome is that we are more selective about the complaints we look at in detail, prioritising where it is in the public interest to investigate. While providing a more sustainable way for us to work, it has meant that changes in uphold rates this year are not solely down to the nature of the cases coming to us. We are less likely to carry out investigations on 'borderline' issues, so we are naturally finding a higher proportion of fault overall.

Our average uphold rate for all investigations has increased this year and you may find that your organisation's uphold rate is higher than previous years. This means that comparing uphold rates

with previous years carries a note of caution. Therefore, I recommend comparing this statistic with that of similar organisations, rather than previous years, to better understand your organisation's performance.

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 were satisfied 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 26 July 2023. 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

In last year's letter we noted the difficulties we had dealing with your Council caused by late responses to investigation enquiries. I am pleased to report our experience has improved this year, with quicker responses to our enquiries and late responses now noted in around half as many cases than last year. Thank you for the efforts to improve your liaison with my office; I hope to see it continue in the year ahead.

Supporting complaint and service improvement

I know that complaints offer organisations a rich source of intelligence and insight that has the potential to be transformational. These insights can indicate a problem with a specific area of service delivery or, more broadly, provide a perspective on an organisation's culture and ability to learn. To realise the potential complaints have to support service improvements, organisations need to have the fundamentals of complaint handling in place. To support you to do so, we have continued our work with the Housing Ombudsman Service to develop a joint complaint handling code that will provide a standard for organisations to work to. We will consult on the code and its implications prior to launch and will be in touch with further details.

In addition, our successful training programme includes practical interactive workshops that help participants develop their complaint handling skills. We can also offer tailored support and bespoke training to target specific issues your organisation might have identified. We delivered 105 online workshops during the year, reaching more than 1350 people. To find out more visit www.lgo.org.uk/training or get in touch at training@lgo.org.uk.

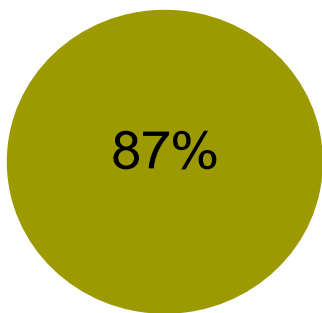
We were pleased to deliver an online complaint handling course to your staff during the year. I welcome your Council's investment in good complaint handling training and trust the course was useful to you.

Yours sincerely,

A handwritten signature in blue ink that reads "P. Najsarek". The signature is written in a cursive style with a large, looped 'P' and a long, sweeping underline.

Paul Najsarek
Interim Local Government and Social Care Ombudsman
Interim Chair, Commission for Local Administration in England

Complaints upheld



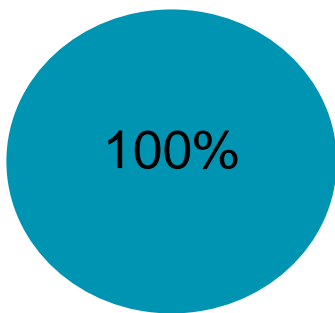
87% of complaints we investigated were upheld.

This compares to an average of **80%** in similar organisations.

53
upheld decisions

Statistics are based on a total of **61** investigations for the period between 1 April 2022 to 31 March 2023

Compliance with Ombudsman recommendations



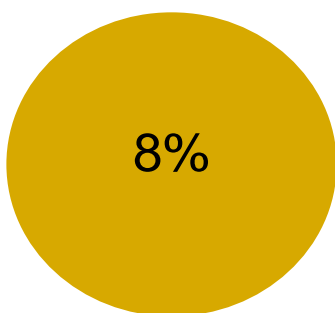
In **100%** of cases we were satisfied the organisation had successfully implemented our recommendations.

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

Statistics are based on a total of **51** compliance outcomes for the period between 1 April 2022 to 31 March 2023

- 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 **8%** of upheld cases we found the organisation had provided a satisfactory remedy before the complaint reached the Ombudsman.

This compares to an average of **6%** in similar organisations.

4
satisfactory remedy decisions

Statistics are based on a total of **53** upheld decisions for the period between 1 April 2022 to 31 March 2023

To: Governance & Audit Committee

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

Date: 3rd October 2023

Subject: Report on use of covert investigative techniques surveillance, covert human intelligence source and telecommunications data requests carried out by KCC between 1 April 2022 – 31 March 2023

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 2022/23 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 15th November 2022.

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 2022 – 31 March 2023

Total number of authorisations granted for 2022/23 (figure for 2021/22 in brackets):

Surveillance – 0 (2)

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

Access to telecommunications data – 4 (2)

4. Purposes for which covert techniques used

One of the telecommunications data requests was in relation to an investigation into the sale of a dangerous hair styler. It transpired that the seller is not based in the U.K.

The second telecommunications request was in relation to an investigation into the sale of counterfeit goods and illegal vapes. This application did not elicit any information of value to the investigation.

The third telecommunications request was in relation to an investigation into fraud linked a vehicle repair business. Parallel enquiries suggested that other, less intrusive means of achieving the desired outcome had become available and this application was, therefore, withdrawn before any data was provided.

The fourth telecommunications request was in relation to an investigation into the sale of illegal vapes. This application did not elicit any information of value to the investigation.

5. Update on cases highlighted in last year's report

A case involving the supply of illicit tobacco was highlighted as being ongoing in last year's report. This related to a wide-ranging operation with partners into an organised crime group (OCG) supplying illicit tobacco at various locations in Kent. Disruption tactics were used in this operation, as opposed to prosecution, meaning that quantities of tobacco were seized and closure orders for certain retail premises were secured by our District and Borough Council partners. The current intelligence picture suggests that this activity has been successful and the OCG is no longer functioning in this area.

Two cases in last year's report, one in relation to a motor trade fraud and one into a fraud linked to environmental claims, were described as being before the courts. These cases are still before the courts. There are significant backlogs of cases in the Crown Courts in Kent which are impacting on the delivery of justice in relation to these prosecutions.

The final case highlighted in last year's report related to illegal television streaming fraud. The report said that convictions had been secured but that sentencing was awaited. Two individuals received prison sentences. Billy Martin from London received 21 months and Darren Bough from Dover 2 years. The trial judge described the defendants as 'a couple of Fagins' and explained that the matters were too serious to avoid custodial sentences. He said that the defendants' actions 'struck at the heart on online commerce'.

6. 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.

There were no reportable errors during the reported period.

7. 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.

8. 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

Mark Rolfe

Interim Head of Community Protection

Tel: 03000 410336

Email: mark.rolfe@kent.gov.uk

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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From: Roger Gough, Leader of the Council
 Dylan Jeffrey, Cabinet Member for Communication and Democratic Services
 Ben Watts, General Counsel

To: Governance and Audit Committee, 25 October 2023

Subject: Governance Review

Status: Unrestricted

1. Introduction

- a) There are many aspects to good governance within a local authority. Done properly, they are mutually reinforcing. Over recent years, the Council has taken a number of steps to materially strengthen our key governance documentation and Members of the Governance and Audit Committee have been involved in those changes as part of the Committee's own transformed role.
- b) Since 2018, we have been materially changing the way that we do the Annual Governance Statement. We are self-aware in relation to the need to continuously improve both the way in which the Council operates and the way in which we manage and monitor that. That is an ongoing challenge and the way in which the statement is drafted and the information collated has reflected the significantly challenging operating position for the Council.
- c) Members of the Committee will be aware that this year's statement sets out an unprecedented programme of activity reflective of the commitment to continuously improve and to seek to address the challenges faced and key findings identified. Some of that programme was already planned and contemplated but the statement is the annual recognition of the steps needed to improve.
- d) Separately, Members will have seen the challenges experienced in other authorities that have not faced up to the need to continually review and refresh not only the core documentation but the behaviours and expectations on Members, Officers and external advisors operating within the Governance system.
- e) As part of the programme of activity for External Audit for 2023/24 and in pursuance of the desire and need for continuous improvement, it was agreed that Grant Thornton would undertake a governance review including some of the behaviours underpinning our arrangements. The outcome of that work is appended to this paper and the activities/actions in response are being included in this year's Annual Governance Statement where they have not explicitly been

referenced or delivered elsewhere. The AGS will be presented to the Governance and Audit Committee at their next meeting.

- f) Given the nature of the report and the applicability to all Members, it is recommended that the Committee receive an update on progress against the recommendations at the meeting of April 2024 and ahead of the annual report of the Governance and Audit Committee going forward to County Council next July.

2. Progress since the Report

- a) Whilst the Council is not in the same position as some of those authorities that have had major governance failings, it is recognised that there have been warning signs in recent years that must be heeded around compliance with governance. Both the report and the AGS impress the importance of making changes to avoid making the same mistakes that characterised failure elsewhere. The Council recognises and accepts the importance of the right behaviours being needed to back up the written governance. As set out below, a range of actions and issues have already been undertaken with the remainder to be delivered over the course of the next six months to meaningfully engage and improve.
- b) It is recognised that some of these conversations and changes are difficult but are needed in order to protect the future of the Council. Further guidance has been shared with senior officers in relation to political conversations ensuring a greater demarcation of private political discussions. Cabinet Members Meeting ensures that it takes political discussions separately. The review of the terms of reference alongside the Corporate Board refresh will be introduced before the end of the calendar year as the new Cabinet beds in.
- c) The challenges mentioned in the paper and the AGS around clarity on the Council's financial position and relative priorities have been specifically considered in the recent Cabinet papers for the meetings on 17 August and 5 October 2023.
- d) Importantly, the language and approach to build Securing Kent's Future responds correctly to the challenge in the review around the organisational need to respond as a single entity rather than in a silo/responsibility based way. The prioritisation of the best value obligations and presentation of that as part of the clear methodology for future plans is a definitive change of direction and follows reflection on the recommendations laid down in the report. As a further example of this, the way in which the priority given to the new models of care element of Framing Kent's Future was presented in the Cabinet paper reflects a desire to ensure a whole council approach to such strategic thinking.
- e) Members have previously received a training session and then subsequently a paper in relation to the learning from other local authorities. Importantly, the training session included both Cabinet and Members of the Governance and Audit Committee. The paper was also circulated to Members of Corporate Board and the learning from other authorities has been reflected in Securing Kent's

Future and the executive and officer discussions. Further analysis and activity will be needed given the increasing number of authorities facing challenge.

- f) Progress has been made in relation to the issues around Member development with a paper and discussion at Selection and Member Services Committee on 19 October 2023. The challenges and opportunities around Member development have been noted and understood.
- g) Over the summer, a survey of all Members was carried out to understand needs and inform the future design of training.
- h) The following first tranche of training will pick up on identified learning needs and the lessons learned from prior audit reports, the AGS and the External Audit report:
 - i. Training on Executive Decisions for Cabinet Members
 - ii. Media/Reputation Training for Executive Members, Chairman and Opposition Group Leaders
 - iii. Democratic Services Focussed Training including use of Mod.gov systems
 - iv. Training in chairing meetings
 - v. Priority on training identified in the AGS
 - vi. Member Awareness Sessions on the Armed Forces Covenant and Corporate Parenting
 - vii. Personal Safety
 - viii. Ordinary Committee Training – Regulation Committee, etc.
- i) The Member Development Sub-Committee has recommended a challenging new programme of learning and development and subject to the comments of Selection and Member Services Committee will finalise a delivery plan which will commence from January 2024 and be shared with all Members.
- j) Changes have been made to the Commissioning arrangements within the Council which reflect the key concerns raised, with further work being undertaken as that new model beds down. Importantly, since the report, the Council has finished the planned work on Spending the Council's Money which has been approved and is now being widely communicated. This addresses some of the procurement issues picked up in the report and clarifies accountabilities and responsibilities.
- k) The new Commercial team with responsibility for procurement are prioritising the Contracts Register and Contracts Pipeline which will form part of earlier information sets available in real time to Members and Officers. This will also support greater commercial transparency in supporting FOI queries. Since the report, work has been completed on the fully searchable disclosure logs for FOI ([Kent County Council Disclosure Log \(icasework.com\)](https://www.kent.gov.uk/icasework.com)) meaning that prior FOI responses can be accessed via the Council's website.
- l) The comment on FOI is noted and improvement plans are being developed on FOI and the accountability for timely response is being limited to relevant senior officers within directorates. A Member deep dive is taking place on FOI as part of

the improvement activities and system improvements will mean that the chasing is done by a computer to leave the limited strategic resource available to advise on difficult queries around exemptions.

- m) Members will be kept apprised of all the relevant updates and subject to the views of the Committee this can be tracked in real time.

3. Future Progress and Overview

- a) It is intended that the activities and future actions that have been designed to respond to the recommendations will be included as part of the AGS and tracked through that mechanism.
- b) However, it is recognised that this is an important report which has elements that are also about change in the way in which all Members engage with their role, residents and the Council's governance. The activities include a paper and discussion at other non-executive Committees as well as forthcoming changes to the Constitution which will go to County Council in December.
- c) Governance and Audit Committee is the appropriate Committee to reflect on the way in which the Council has taken the recommendations forwards, particularly given they bring responsibilities for all Members. It is therefore suggested that a further report be brought to Governance and Audit Committee in April to demonstrate the activities undertaken. This will provide an opportunity for the Committee to assure themselves of the actions taken but also to consider the behavioural changes needed as set out by the report across the whole Council before the Committee's annual report to the County Council next July.

4. Recommendations

The Governance and Audit Committee is asked to:

- a) NOTE the report and Governance Review by External Audit
- b) NOTE that a further report be brought to the Governance and Audit Committee in April 2024 for assurance.
- c) NOTE the presentation of the Annual Governance Statement at the next meeting and the inclusion of relevant sections of the report in the statement.

5. Background Documents

None.

6. Report Author and Relevant Director

Ben Watts, General Counsel

03000 416814

benjamin.watts@kent.gov.uk

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Kent County Council Governance Review

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Contents



We are required under Section 20(1)(c) of the Local Audit and Accountability Act 2014 to satisfy ourselves that the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. The Code of Audit Practice issued by the National Audit Office (NAO) requires us to report to you our commentary relating to proper arrangements.

We report if significant matters have come to our attention. We are not required to consider, nor have we considered, whether all aspects of the Council's arrangements for securing economy, efficiency and effectiveness in its use of resources are operating effectively.



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The contents of this report relate only to those matters which came to our attention during the conduct of our normal audit procedures which are designed for the purpose of completing our work under the NAO Code and related guidance. Our audit is not designed to test all arrangements in respect of value for money. However, where, as part of our testing, we identify significant weaknesses, we will report these to you. In consequence, our work cannot be relied upon to disclose all irregularities, or to include all possible improvements in arrangements that a more extensive special examination might identify. 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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1. Executive summary

This Review was undertaken as a follow up to issues raised during the Council's annual audit, for 21/22 and matters raised in the Council's Annual Governance Statement for 21/22 to answer three key questions:

- **Do members and officers understand and respect each other's roles?**
- **Do members and officers have a shared understanding of risks, challenges and opportunities?**
- **Are the Scrutiny and Audit Committees effective in supporting accountability and providing assurance?**

To answer these questions fully it is necessary to explore the Council's formal and informal governance arrangements as well as working relationships between members and officers, particularly between the Leader and Cabinet and senior officers. There are significant differences in the nature of the relationships between Cabinet members and chairs of committees and senior officers, those between officers and other members of the administration and those between officers and members from opposition parties. The focus of this review is on the way in which Cabinet members and senior officers work together, although it also covers relationships between other members and between other members and officers, where they are relevant to the three key questions.

The Council faces very significant challenges to its financial sustainability and needs to balance its books. It is therefore vital that it has strong formal governance arrangements, including its Constitution, Code of Conduct, Member/Officer Protocol and financial regulations and strong values, which are universally respected and adhered to by all members and officers.

1.1 Do members and officers understand and respect each other's roles?

Members' and officers' roles underwent a significant change in July 2022. The structure of the Council was changed by the re-introduction of the role of Chief Executive. That was a major shift from the previous leadership model to one in which there are more balanced relationships between members and officers and recognition of the necessity for a strong corporate centre to manage the overall financial and strategic challenges facing the Council. However, changing the structure is only the first step on a transformational journey. The Council is now at a critical juncture where the failure to complete this journey would put it at risk of serious failure. To strengthen its ability to be a financially sustainable and effective organisation it needs to complete its transformational journey by changing its systems and behaviours, including strengthening members' and officers' working relationships, to ensure they support the new structure.

It is important to be conscious of the power inherent in the roles of members, particularly Cabinet members and the impact, both positive and negative, of their behaviour on officers. All members, including opposition members, need to be aware of their corporate responsibilities, including the role of the Council as the employer of its officers and the consequent duties of care owed to officers. There is always a tension between the need to create effective working relationships and avoid the risk of those relationships becoming over-familiar and even collusive. Members need to be mindful that their reactions to officers may be experienced as micro-aggressions. Each minor spat may seem inconsequential but repeated bad behaviour on the part of members, including backbenchers and opposition members, can contribute to the creation of a perceived toxic environment. It's important for members to show respect to officers, for their expertise and hard work. For example, it's not helpful to criticize officers for not being immediately available to answer members' queries or to imply that officers who are working remotely are not actually working. A more reflective approach to managing relationships can help members and officers to understand both why relationships are successful and why they go wrong.

1.2 Do members and officers have a shared understanding of risks, challenges and opportunities?

There is a shared high-level understanding of the Council's difficult financial position and the risks that poses to the Council. However, there is also evidence of a lack of understanding, on the part of some Cabinet members of the legal framework within which the Council operates and this can lead to conflict and increased risk of governance and operational failure if they wish to act in a way which is contrary to the constitution, financial regulations or other governance arrangements. Formal governance arrangements also set out where accountability lies for decision making and how the needs and ambitions of individual directorates are balanced with the Council's imperative to maintain its financial sustainability and focus on its key priorities. Currently, the Council lacks sufficient clarity about its priorities. Framing Kent's Future sets out commendable ambitions, but additional processes are required to prioritize them and link them to funding. Without a robust prioritization process which identifies where the Council should be focusing its increasingly limited resources, it is very hard to deliver savings of the order of magnitude required to improve the Council's challenging financial situation. Portfolio holders are naturally keen to avoid cuts to the services for which they are responsible, particularly when those services improve the quality of residents' lives and are valued accordingly. However, Cabinet members now need a shared, coherent, corporate approach to understanding the risks, challenges and opportunities they face as well as being corporately responsibly for delivering the savings set out in the budget for 2023/24.

1. Executive summary (continued)

To meet its significant challenges and mitigate the risks it faces, Council members and senior officers need to complete a profound transformational change, from structures, systems and behaviours that empowered individual portfolio holders and directorates to those which enable stronger, consistent, and coherent corporate leadership. The Council has made some initial progress, most notably in its structures, The Council now needs to ensure its systems promote organizational effectiveness and avoid governance failures, such as the one which occurred in relation to the re-commissioning of SEND transport services. The Council still carries the cultural imprint of its previous organizational model and that can be observed in both member and officer expectations and behaviours, although the atmosphere is more collegiate under the new Leader. This highlights the need for a coherent and adequately resourced transformation programme.

Currently, governance systems are not coherent and there is a lack of clarity about which decisions are political and which are operational. The Council does not have a shared understanding of the meaning of accountability. Members and officers have different, individual and collective roles and accountabilities in governance and decisions are shaped by the dialogue between politicians and professional officers. It is important for all members to recognise the vital role that officers play, particularly those with statutory functions, in ensuring effective decision making that complies with the Council's legal duties and reduces risks.

1.3 Are the Scrutiny and Audit Committees effective in supporting accountability and providing assurance?

The Scrutiny Committee, which helps to hold the Cabinet to account and the Governance and Audit Committee, which provide the Council with assurance that risks are managed effectively, are essential elements of formal governance.

Every committee of the Council is chaired by a Conservative, including Scrutiny. Although there is nothing improper in these chairing arrangements, the role of Scrutiny is to challenge the Leader and Cabinet and hold them to account for their performance, so it is common practice in many councils for the Scrutiny Committee to be chaired by a member of the Opposition. It is important that the chair of Scrutiny has the necessary skills and experience to undertake the role effectively.

A recent review of the Governance and Audit Committee by CIPFA, highlighted several concerns, including that the Committee was too political and was trying to do too much. The performance of the Governance and Audit Committee is thought to have improved and is now more focused on its primary purpose. However, the Committee's remit is still too wide, and its agenda is too crowded. The Chair is effective, although some members of the committee are not sufficiently active and engaged. Behaviour at some Governance and Audit Committee meetings has not demonstrated the respect for the role of Internal Audit and their findings which we would expect to see.

Questions were raised during this governance review about the effectiveness of Cabinet Committees because they are not decision-making bodies. It was noted that some members of those Committees appeared not to be fully engaged and do not ask any questions or make any comments about the matters under discussion. It was thought that this behaviour is known about and tolerated rather than being challenged.

2. Report

2.1 Purpose of the Governance Review

This governance review has been undertaken following concerns raised during the Council's annual Value for Money Audit for the audit year 2021/22 and the Council's Annual Governance Statement about poor progress being made to resolve governance and service issues. There were concerns about a lack of trust between the Cabinet and those responsible for scrutiny and governance. There had also been instances where the roles of statutory officers had not been treated by Cabinet members with sufficient respect and that has undermined both relationships and effective decision making. If these issues are not resolved, they will have a negative impact on the good governance and financial sustainability of the Council.

Good governance is maintained through a combination of rules, such as the Constitution, Code of Conduct and Member/Officer Protocol, and organizational and individual values. This review has focused on the extent to which the Council has effective formal and informal governance arrangements which are underpinned by six core values: independence of mind, accountability, transparency, integrity, clarity of purpose and effectiveness.

Good governance is also supported by the work of key committees, including Scrutiny and Governance and Audit. The Scrutiny Committee performs a vital function, to hold the Cabinet to account and to enable learning both from success and failure. The Governance and Audit Committee's role is to ensure, via the work of internal and external audit, that all its systems and functions are operating effectively to deliver Best Value. The Governance and Audit Committee also oversees the way in which the Council identifies, manages, and mitigates a wide range of risks. Their work helps to reduce the risk of fraud, poor commissioning and procurement and other challenges to financial sustainability. Risk management is a crucial function that underpins organizational effectiveness. The review also considered how effective member and officer relationships are. Good member and officer relationships are characterized by mutual respect for each other's different roles, particularly the statutory roles and responsibilities of the Chief Executive, s151 Officer and the Monitoring Officer. Good relationships also support mutual challenge, which is vital to ensure good strategic decision making, informed by officers' expert advice.

2.2 Methodology

The governance review was undertaken between January and March 2023. It included reviewing video recordings of Council and committee meetings, a document review of minutes of meetings, reports and documents relating to formal governance, such as the Annual Governance Statement, Constitution and Code of Conduct and individual interviews. Twenty-four structured, confidential interviews were completed, with members, including Cabinet members, the chairs of Scrutiny and Governance and Audit, opposition members and seven officers, including members of the senior management team and the Head of Internal Audit. All evidence gathered during the review has been triangulated, that is, there are at least three sources of evidence for each judgement set out in this report.

The evidence about how governance operates within the Council has been tested against six core governance standards: independence of mind, accountability, transparency, integrity, clarity of purpose and effectiveness and how well the Council's structures, systems and behaviours support good governance.

3.1 Foundations of good governance: Independence

3.1 Independence

To what extent do members, including Cabinet and Committee members, and officers demonstrate independence of mind in their roles?

3.1.1 Structures

Committees are not as effective as they could be. There is evidence of a lack of understanding, on the part of some members, of the legal framework within which the Council operates and this can lead to conflict if they wish to act in a way which is contrary to the constitution or other governance arrangements. Every committee is chaired by a Conservative, including Scrutiny. Although there is nothing improper in these chairing arrangements and the current Chair of Scrutiny is well-regarded, the role of Scrutiny is to challenge the Leader and Cabinet and hold them to account for their performance, so it is sometimes considered good practice for the Scrutiny Committee to be chaired by a member of the Opposition. However, although having a member of the opposition as chair of Scrutiny would help to demonstrate the importance the Council places on independence of mind, it is also important that the role is undertaken by a member with the necessary skills and attributes, who commands the respect of other members.

Several interviewees reported committee chairs curtailing discussions when they are not interested in the topic under discussion. Some questioned the purpose of Cabinet Committees and described them as 'talking-shops'. Some interviewees also expressed concerns that the pre-scrutiny and post-decision functions are not being used effectively.

3.1.2 Systems

Some Cabinet members do demonstrate independence of mind, keep their knowledge up to date and challenge others. Some do not and rely on officers to prepare their statements and speeches. Some Cabinet members do not appreciate the need for regular training and continuing development, because they are long serving members. This is a significant problem because they do not know what they do not know. It is necessary to have more robust expectations about participation in member development and uptake of mentoring for those in key leadership roles and those which attract allowances, for example, training and development should be mandatory for anyone with a Special Responsibility Allowance. These expectations should apply to all members, including Opposition members. It is important not to assume knowledge on the part of members who take up leadership roles. Leaders of opposition parties also need development, support and mentoring to understand and fulfil their roles effectively.

3.1.3 Behaviours

Interviewees considered that some members are very open to facts and come to discussions and debates with open minds, but some will already have made up their minds and therefore have little interest in any information that might challenge their settled view. This creates risks that mistakes will be made, particularly when other members do not challenge instances of reluctance to consider the full range of information available. Observation of meetings and the views of interviewees provide strong and consistent evidence that the Leader does actively encourage open debate, demonstrates good leadership and listening skills, and encourages Cabinet members to demonstrate independence of mind. However, some interviewees felt that challenging conversations did not always lead to changes in behaviour. Some interviewees thought that Cabinet members do not always spend enough time discussing very complex issues before making decisions.

We were led to understand that reports are sometimes slanted to achieve a particular outcome, rather than fully exploring possible options in a balanced way. Some Cabinet members are tempted to get drawn into operational details. That may sometimes be necessary, but Cabinet members and officers need a better shared understanding about how they navigate the contested spaces between strategic and political issues and operational matters. Lack of understanding of the boundaries between member and officer roles has been demonstrated at Cabinet Committee meetings when questions were asked of officers, but answered by the portfolio holder who then sometimes shut down discussions if they did not want to be challenged. Portfolio holders also sometimes use junior members of staff to gain knowledge, rather than going through the relevant Director.

Concerns were expressed that some members of the Governance and Audit Committee, Scrutiny and Cabinet Committees appeared not to have read papers in advance of the meetings and did not ask any questions or make any comments about the matters under discussion. It was thought that this behaviour is known about and tolerated rather than being challenged.

There is a tendency to complacency and denial that problems exist among some Cabinet members, at a time when self-reflection and honest self-appraisal is necessary to navigate major organizational change and respond to significant challenges. Interviewees described instances when defensiveness and resistance to challenge prevented Cabinet members from gaining a better understanding of complex issues and led to reluctance to follow officer advice. Members need to be fully informed and regularly updated about the issues which impact on their portfolios and the work of their committees as well as current key issues, unforeseen events, and changes in government policy. Independence of mind is not an excuse not to be well informed or to ignore officers' expert advice.

3.2 Foundations of good governance: Transparency

3.2 Transparency

To what extent do members and officers demonstrate transparency and openness in the way in which they lead the Council and manage its business?

3.2.1 Structures

The new organisational structure does make the roles of senior officers clearer and this helps to support transparency. However, some parts of the Council's governance arrangements are opaque. For example, the Cabinet Members' Meeting plays an influential role in decision-making, even though it is not a decision-making body. It is also attended by officers, and this blurs the boundaries between political and operational decision making.

3.2.2 Systems

The Cabinet does aim to be as transparent as possible, as evidenced by the small number of 'Part B' issues for confidential discussion and decision making. Several examples were given of when the Council has responded to failures in a very open way, for example, the SEND transport failure and the Ofsted report into SEND services. However, some interviewees gave examples of when efforts had been made by Cabinet members to keep bad news quiet and encourage officers to do the same. There are several risks to transparency, including, failures in decision-making processes leading to 'urgent key decisions' that reduce the Council's ability to be transparent.

Interviewees from other parties did question the extent to which external communications was all about the Conservative administration, rather than the Council as a whole. They also gave examples of times when not all the information they received from officers was accurate and complete. Some also thought they do not always get the right level of cooperation from officers when it comes to sharing information and they would benefit from more briefings.

Sometimes the Council's ability to be transparent is curtailed by the strictures of central government, for example in negotiations about 'Safety Valve' changes in the funding model for SEND services.

There were mixed views on the effectiveness of the Scrutiny Committee in supporting transparency. Some thought that Scrutiny works reasonably well but some members of Scrutiny do not understand their role and misunderstand decision making process. However, it was noted that the Chair of Scrutiny does let interested people come to meetings and ask questions.

3.2.3 Behaviours

Some interviewees thought that there is sometimes a lack of clarity, when decisions are being made, about what is a member opinion and an officer opinion.

Some interviewees felt that Freedom of Information (FOI) has become inappropriately politicized by some members. There have been significant delays in responding to FOI requests and it is necessary to allocate sufficient resources to respond to requests in a timely way. Delays in responding to FOI give the wrong message about how committed the Council is to transparency.

Reluctance on the part of Cabinet members to answer advance notice questions in Full Council, possibly because of political embarrassment, undermines transparency. It may be an acceptable political strategy, but such behaviour is likely to undermine the Council's reputation for transparency.

3.3 Foundations of good governance

Accountability (1)

3.3 Accountability

To what extent do members and officers in senior leadership roles hold themselves accountable for their actions and how well does the Council hold them to account?

3.3.1 Structures

The Council has made a very significant change in its structure. It is moving from a model in which the corporate centre was weak in comparison with individual directorates. This signals a real change in relationships and expectations within the Council and is a necessary, but not sufficient, step towards creating a council which is fit for purpose and fit for the future. The change from a Head of Paid Service to a Chief Executive Officer model is about much more than a job title. The move to a CEO model clarifies accountability, in theory, but systems and behaviours now need to catch up with that structural change, through a transformational change programme. This will involve strengthening corporate planning and delivery processes, including an inclusive Forward Plan, clearer decision-making pathways and a centralized system for managing procurement, commissioning and contract. to ensure consistency and compliance and creating a stronger corporate culture, through leadership and organizational development.

The Cabinet has a weekly, informal meeting, which also includes officers, and this raises the question whether it is a political forum or part of the Council's decision-making structures. Although not a part of formal decision-making processes, the deliberations at Cabinet Member's Meeting do have an impact on decision making within the Council which creates some uncertainty about lines of accountability.

When the Council developed its 'executive and scrutiny' model some ten years ago it retained some elements of the previous committee system by having Cabinet Committees. This has blurred lines of accountability, to some extent, as they are not part of any decision-making process, and many interviewees expressed the view that Cabinet Committees did not add value.

3.3.2 Systems

Accountability, in a political environment, is very complex. Members and officers are all accountable, through their individual roles and responsibilities. There is often a contested space between political and managerial accountability and differences in the way in which all the players understand the extent and limits of their individual and collective accountability can lead to significant misunderstandings. Some interviewees described examples of over-compliance on the part of some Cabinet members while some Cabinet members argued that they had to trust their officers and rely on their expert advice. Some Cabinet members are alert to the need to fully understand complex issues, but some interviewees commented that some Cabinet members will sign anything that is put in front of them, whereas others take a much closer look at reports and plans before signing them off.

When accountability is shared between portfolio holders and directorates there is always a risk that confusion about where accountability lies will result in governance failures. These problems are sometimes compounded by competitive behaviour between portfolio holders and directorates which can result in reluctance to share information and ultimately to playing the 'blame game', with the focus either on another directorate or officers. This type of behaviour inhibits transparency and makes it harder to learn from mistakes. There was a perception among some interviewees that 'lessons learned' exercises deflect accountability without increasing organizational knowledge and delivering the necessary changes.

The failure of the commissioning of SEND transport services illustrate what can go wrong if lines of accountability are not clear. Although it can seem very harsh to hold portfolio holders to account for failures in their directorates, that is what political accountability means. However, political accountability may be misinterpreted as personal accountability and this can lead to unfair judgements, as it is impossible for portfolio holders to have a good understanding of and be responsible for every operational issue within their directorate. Indeed, if they wanted oversight of all operational issues, they would be criticized for crossing the line and interfering in matters which are the responsibility of officers. Members and officers should regularly discuss and agree their respective accountabilities to ensure mutual understanding a reduce the risk of a lack of clarity leading to governance failures.

3.3 Foundations of good governance: Accountability (2)

3.3.2 Systems (continued)

While individual portfolio holders are accountable for their directorates, they also have overarching duties to the Council. All need to have regard to the interests of the Council as whole and its Best Value duty, the necessity of making savings and the need for assurance that risks are understood and managed, when making decisions.

An example referred to by several interviewees was the management of Kent and Medway Business Fund, where debt was written off, as the result of both officers' and a Cabinet member's mistakes, in breach of Finance Regulations, for which several interviewees thought no-one was held to account

The way in which Internal Audit were challenged about the findings of their review into this matter at Governance and Audit Committee, even though they were demonstrably reporting on a matter of fact, highlights the significant risk to good governance arising when members do not respect officers' professional expertise. Similarly, it was thought that no-one was held to account for failures in relation to investments made by the Pensions Committee.

Many interviewees were of the view that Kent County Council is not yet a learning organization, in part because of confusion of where accountabilities lie and what accountability really means. It was thought that the Council is not good at following up and evaluating the impact of decisions and that makes it harder to learn from mistakes.

Many interviewees expressed the view that Scrutiny works very well when it undertakes short, focused enquiries but less so when it goes on what were described as 'fishing expeditions'. It was also thought that Cabinet members should show more respect for Scrutiny and attend Committees meetings when asked.

3.3.3 Behaviours

There was a very strong consensus among interviewees that the Leader demonstrates a much more co-operative and collaborative leadership style than his predecessor, and this change to a reflective, affiliative approach has been very warmly welcomed.

It has been argued that the significance of the change to the structure of the Council, in terms of accountability, has not been fully explained to or understood by members and officers. Many interviewees thought that some Cabinet members are resistant to change and unwilling to learn about new approaches, while others are more willing to embrace change. It was observed that some directorates were fighting a rear-guard action and exhibiting the sort of behaviour which undermines efforts to move to a more corporate approach to decision making. It was thought that insufficient work has been done to date on culture change to support the effective implementation of the new structure.

Several interviewees thought that Cabinet members do try to hold themselves accountable, but others expressed the view that some Cabinet members can be defensive when things go wrong and only take collective responsibility late in the day.

Some interviewees felt strongly that the financial position of the Council and the urgent need for organisational change now required the Leader and Cabinet make increasingly difficult decisions. Therefore, they need to strengthen their approach to collective leadership and demonstrate their shared accountability for those difficult decisions.

Following the CIPFA report, the performance of the Governance and Audit Committee has improved, and it was now less political and more focused on issues. However, it was also thought that the Committee's remit is still too large, and its agenda is too crowded, because it sometimes wishes to be involved in matters which are more appropriate for Scrutiny. There was a strong consensus that the Chair of Governance and Audit is very effective.

3.4 Foundations of good governance: Integrity

3.4 Integrity

To what extent do members and officers behave with integrity and demonstrate the highest standards of public service?

3.4.1 Structure

The Council needs to build on recent structural changes. It needs to reflect on way in which changes to Cabinet members' and senior officers' leadership roles impact on the culture of the organization.

3.4.2 Systems

The Constitution, Code of Conduct and Member/Officer protocol are being revised and updated to bring them into line with the new structure. This will help provide additional clarity about what behaviour is and is not acceptable and make it easier to call out bad behaviour and enforce standards.

The Council also needs to adopt a new approach to member development, akin to the expectation that officers will take responsibility for their continuing professional development. The evidence of a paternalistic and sexist culture requires an effective response. That should include mandatory training on unconscious bias for all members and specific training developed for members with roles that carry a Special Responsibility Allowance.

3.4.3 Behaviours

Cabinet members do think they demonstrate integrity as individuals, although several interviewees gave examples of instances when Cabinet members had not behaved with integrity and had not been challenged for that behaviour. For example, some Cabinet members are thought by some interviewees to be encouraging officers to use them as an alternative route to get the answers they want, rather than using the correct decision-making process.

The current culture undermines members' ability to demonstrate the highest standards of public service. The behaviour of some members, in particular back-benchers, was described in negative terms by many interviewees variously as paternalistic, arrogant and inward looking. Although bad behaviour may be thoughtless rather than intentional, all members, including opposition members, need to be aware of and understand the impact of their behaviour on others and call out inappropriate and discourteous behaviour, otherwise the impression will be created that such behaviour is acceptable.

Concerns about sexist behaviour, on the part of some members was excused and downplayed by some interviewees on the basis that it was much worse in the past, that victims are thought to be weaponizing the issue or that they should just toughen up. These are not good messages to be sending about the integrity of members or the prevailing culture of the organization. Such excuses amount to victim blaming and inhibit individual and organizational learning. Talking down to female members, adopting a jokey style when serious issues are being discussed that have significant impacts on people's lives, using sexual innuendo and barracking female members all create a hostile, misogynistic environment which has a negative impact on officers as well as members. Some interviewees stressed that some senior women members are treated with respect but that should be the norm, not noteworthy. Experienced female politicians have become very resilient in response to this type of behaviour and may consequently underestimate the impact on others.

Several examples were given of when members had created unnecessary dramas about minor or non-urgent issues and demanded swift responses from officers but then later lost interest in the issues. This is an unacceptable waste of officers' time. Micro aggressions towards officers are at risk of becoming normalized if they are not challenged.

3.5 Foundations of good governance: Clarity of purpose

3.5 Clarity of purpose

To what extent do members and officers share a clear common purpose, with a shared understanding of the Council's priorities?

3.5.1 Structures

The current decision-making structure does not support the identification and delivery of key priorities, and this undermines the ability of the Council to achieve financial sustainability. There is a lack of clarity about how and where decisions are made. Interviewees reflected a shared recognition of the need for a dedicated political space to enable Cabinet members to clearly define their priorities, which can then feed into strategic planning and budget setting processes.

3.5.2 Systems

The current administration did not publish a manifesto at the last election. Although it is not necessary to do so, the development of a manifesto does provide an opportunity to define the administration's priorities. The Council currently lacks sufficient clarity about its priorities. *Framing Kent's Future* sets out commendable ambitions, but they are not prioritized or not linked to funding. Without a robust prioritization process which identifies where the Council should be focusing its increasingly limited resources, it is very hard to agree where savings, of the order of magnitude required, are to be made to resolve the Council's challenging financial situation. Cabinet members are now working with officers to develop a shared, coherent, corporate approach to priorities and savings. Strategic Statements are no longer fit for purpose because of budget pressures and need to be refocused. A Strategic Reset programme is underway to ensure priorities match the available resources.

The previous organizational model, with a weak corporate centre and strong directorates, generated a pattern of silo-based thinking which is no longer fit for purpose in the current challenging environment. Incremental cuts to services are not always effective in achieving Best Value or the best possible outcomes. It is important to develop whole system and outcome focused approaches to prioritization in order to be able to balance the need to deliver its statutory responsibilities and its key priorities.

There is a relatively small number of Opposition members, but interviewees observed that they are becoming more effective. The Opposition Alternative budget was thought to have been an informative exercise.

3.5.3 Behaviours

Several interviewees thought that Cabinet members spend too much time on minor issues and not enough on major strategic risks. It was also thought that one of the reasons the Council failed to make necessary savings last year, is a tendency towards optimism bias which can result in both officers and members hoping for the best instead of planning for the worst.

Cabinet members are understandably reluctant to cut services which improve the quality of residents' lives and are valued accordingly so there are tensions between portfolio interests and corporate interests. Some Cabinet members are thought to be too portfolio focused, and do not place enough emphasis on the Best Value duty of the whole Council.

Cabinet members can sometimes be tempted to get involved in managerial issues, perhaps because the strategic issues can seem very unrewarding. It was thought that priorities are not always uppermost in their minds when dealing with day-to-day issues and financial challenges and so the Cabinet does not always act in a sufficiently cohesive way.

It was noted that some members of Cabinet Committees were in the habit of requesting additional information from officers, which took up officer time but served no useful purpose as it did not lead to better informed decisions, as Cabinet Committees are not decision-making bodies.

3.6 Foundations of good governance: Effectiveness (1)

3.6 Effectiveness

To what extent is the Council effective in the way in which it makes decisions and measures performance in achieving key objectives?

3.6.1 Structures

The new structure provides the foundations of a much stronger model of corporate governance. The Council is part of the way through a complex change process and is now at a critical juncture. Further change, including an organisational development programme, is needed to fully embed the new structure. The Council requires an explicit transformation journey for officers and members.

It is not clear how well the Cabinet Members Meeting (CMM) supports effective decision-making. Although the CMM is not a formal part of the Council's decision-making processes it is acknowledged that discussions at CMM do inform decision making. It is not clear whether the principal purpose of the meeting is political or a mixture of political and operational. Most Cabinet members thought that the CMM provided a useful space for political discussions.

There was a strong consensus among many of the interviewees that Cabinet Committees do not serve any useful purpose and do not add value, although some Cabinet members did find their Cabinet Committees helpful.

3.6.2 Systems

The Council has recently experienced two significant failures. The problems with the commissioning of home to school transport for children with special educational needs arose from a failure to identify that such a commissioning process should have been treated as a Key Decision. Because that did not happen, major problems were not flagged up in a timely way and children were left without transport, in some cases for weeks. This had a very negative impact on the children and their families, as well as on the reputation of Kent County Council as a competent council.

Poor decision making on the part of the Pensions Committee in the previous audit year led to a significant loss to the Pension Fund. Although not a significant failure, writing off debts relating to the Kent and Medway Partnership, against financial regulations and the advice of the Monitoring Officer and s.151 Officer, is another example of non-compliance with the Council's own rules and its Best Value duty.

Although each of these failures arose from very different sets of circumstances, there are some common threads which suggest that there is a risk of further failures unless these systemic issues are resolved. One of the common threads is a failure of the Forward Planning process because of a culture of non-compliance in which both some Cabinet members and some officers try to circumvent the Council's decision-making processes. This may be driven by frustration with the time taken to obtain all the necessary input from finance and legal services, but risks of significant failure are increased by late and inaccurate reporting to Cabinet, because the correct processes have not been followed. Central functions, particularly Democratic Services and Finance need to be adequately resourced, otherwise the risk of service and organizational failure will increase. Unless they arise from genuinely unanticipated circumstances or central government's demands, Urgent Key Decisions are sign of system failure.

As a result of the previous organizational structure, Directorates were able to develop their own processes, which became disparate over time, for example, buying their own software and instructing lawyers themselves. Some Cabinet members still think that many matters should be delegated to Directorates, as they were in the past. However, that is not now effective or sustainable. It is now necessary to develop a consistent, corporate approach to the Council's systems. It is particularly important that all the processes that underpin procurement, commissioning, contract management, performance monitoring and evaluation, are part of a centralized system which ensures early warnings of potential problems, timely action, and the provision of accurate information to the Cabinet.

The Council has historically relied on a commissioning approach, or outsourcing, rather than on in-house provision. The commissioning approach does offer some potential benefits, such as consumer choice and a mixed economy of provision but it also presents some serious risks such as market or provider failure, so it is important that the Council considers whether the advantages of commissioning always still outweigh the risks.

The Council did not make the required savings in the last year. While some budget cuts have been made, several interviewees commented that, although some innovative approaches have been successful, not enough consideration had been given to investment to cut costs in the longer term to solve long running problems, including by reducing demand and retaining vital staff.

This year's Safety Valve will help to remedy the situation to some degree, but it is important to ensure that deficits do not build up again.

3.6 Foundations of good governance: Effectiveness (2)

3.6.3 Behaviours

Some interviewees thought that the Council tended to be inward looking and do not seek to learn from good practice elsewhere.

It was also thought that a culture of non-compliance had built up over time and this has undermined the effectiveness of the Council. The behaviour of some Cabinet members and some officers can reduce effectiveness. For example, several interviewees thought that the way in which officers were drawn into political discussions, taking place outside the Council's formal decision-making processes is blurring the boundaries between political and managerial leadership and accountability.

4. Recommendations: Structures and Systems

4.1 Structures

| Recommendations: Key | Impact |
|---|---|
| The Cabinet Member's Meeting becomes a political meeting, for Cabinet members only. | The Cabinet have a dedicated political forum in which to debate and agree their priorities. The Council has clearer decision-making structure and processes. |
| Corporate Board becomes the key forum for managing the political/managerial interface and strategic management. | The Council takes a whole systems approach to strategic planning. The Council has a strategic plan, which is owned by Cabinet and senior officers, to deliver key priorities. Members and officers are clear about decision making processes. Cabinet members and officers are clear about accountabilities, including cross-directorate accountabilities. |
| Recommendations: Improvement | |
| Abolish Cabinet Committees, which were part of the Council's previous structure. | The costs of administering committees are reduced. Savings of officer and member time. Member time is freed up to add value by engaging in pre-decision scrutiny panels. |
| Consider having an Opposition chair of Scrutiny. | The Council demonstrates an increased openness to challenge. |

4.2 Systems

| Recommendations: Key | Impact |
|--|---|
| Create a single system for commissioning, procurement, contracting, monitoring performance and evaluating impact to reduce risk of commissioning and service failures. | Decisions are made in a timely way. The need for Urgent Key Decisions is significantly reduced. Cabinet and senior officers are made aware of problems with commissioning and procurement and can respond to them in good time. |
| Implement and enforce the corporate forward planning process to ensure all reports are timely and reviewed by Finance and Legal to ensure accuracy and rigour. | More accurate and complete reports are produced. Decision making is better informed and more rigorous. The Forward Plan is complete and robust. The risk of service failure is reduced. |
| Complete the update of formal governance arrangements – including the Code of Conduct and Member/Officer Protocol, as set out in the Annual Governance Statement. | The Council has stronger governance arrangements which are fit for purpose. Members and officers have clarity about mutual expectations. There is increased compliance with both formal rules and organisational values. |
| Monitor savings monthly and take immediate remedial action. | Risks to financial sustainability are reduced. |
| Mentoring is provided for all members in leadership roles. | Leaders can fulfil their roles better and uphold high standards. |

4. Recommendations: Systems and Behaviours

4.2 Systems (continued)

| Recommendations: Key | Impact |
|--|---|
| Adopt a Continuing Professional Development (CPD) approach to member training and development and set expectations that all members will take up the training and development which is relevant to their role. | All members are fully supported to develop their skills and knowledge. Members can make better informed decisions. |
| Roles which attract Special Responsibility Allowances are only held by members who have completed the required training and development for those roles. | All members are fully supported to develop their skills and knowledge. Members can make better informed contributions to discussions and debates. Members can make better informed decisions. |
| Provide regular, focussed written and videoed Briefings for members on strategic risks, unforeseen events, best practice and opportunities for organisational and service improvement and transformation. | Members can access all necessary information easily and, in a format and at a time that is convenient to them. Members can make better informed decisions. |
| Ensure duties under Freedom of Information Act are fulfilled and respond to information requests in a timely way. | The Council demonstrates its commitment to transparency. |
| Recommendations: Improvement | |
| The Governance & Audit Committee continues to clarify its role, in line with the recommendations of the CIPFA report, and avoid straying into Scrutiny's areas of responsibility. | Governance & Audit's performance continues to improve. |
| Develop Scrutiny to undertake more short, focused enquiries. | The Council receives timely information and feedback on key issues. |
| Create post-decision Scrutiny panels for People, Place and Policy. | The Council receives timely information and feedback on key issues. |

4.3 Behaviours

| Recommendations: Key | Impact |
|---|---|
| The Leader and Cabinet and the leaders of opposition parties should reaffirm the standards set out in the revised Code of Conduct and Member/Officer protocol and immediately challenge behaviour, examples of which are set out in the report, on the part of members of their groups which does not meet those standards. | Standards of member behaviour rise and remain high. Better and more effective working relationships between members and officers. |
| Complete a transformational change programme at pace so systems and behaviours align with the new structure. | Cabinet members and officers better understand each other's roles. |
| Members' and officers' mandatory training programmes to include understanding unconscious bias . | Members and officers have increased self-awareness of the impact of their behaviour. |
| Recommendations: Improvement | |
| Undertake facilitated joint team building for Cabinet members and senior officers, following the appointment of the new Chief Executive. | Cabinet members and officers better understand each other's roles. Strong working relationships, built on trust, are developed and maintained. |
| Deliver a programme of organisational development for officers. | The Council develops a stronger corporate culture. |
| Cabinet members and senior officers should model corporate thinking and challenge silo-based thinking when making decisions. | The Council develops a stronger corporate culture. |

