

# **Kent County Council**

# **Annual Governance Statement**

# **2021/22**

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### **Purpose of Statement**

The Annual Governance Statement (AGS) is a key document which provides Members and officers with the opportunity to reflect on the processes, activities and behaviours which deliver decision making and activity within the Council.

It is vital that the statement itself, the process to develop it and the political review and discussion of the statement are taken within the operating context of the organisation and the emerging opportunities, risks, and threats that the Council faces.

The AGS provides an overview of the controls that are in place to manage key governance risks. In instances where key governance issues have been identified, the detail of actions taken to make improvements and work still to be undertaken are documented in action plans. Kent County Council is required to produce an Annual Governance Statement under the regulations issued by Government.

It is hoped that the reader will find this statement a thorough and honest account of the operation of Kent County Council's governance arrangements which highlights both strengths and the areas requiring further improvement. It is important to acknowledge that the authority's governance journey is an ongoing one, and this statement recognises the Council's position at a point in time.

In the spirit of seeking improvement, the statement naturally concentrates on areas for further improvement and development. Accordingly, by its very nature it reflects on things that can and should be done differently and contemplates the planned activity necessary to address the issues that have arisen. Importantly, the statement is about continuous improvement and provides challenge. It relies on transparent assessment and it remains important that all those playing a role in the Council's governance continue to openly discuss issues and challenges as they arise and that the Council maintains an environment where those discussions are encouraged.

The Governance and Audit Committee continue to play an important role in ensuring that the authority's corporate governance framework meets recommended practice, is embedded across the whole Council, and is operating throughout the year with no significant lapses.

Previous readers of the AGS will note that this year's statement does not include a detailed overview of the financial year in activity terms by each directorate. This is in pursuance of discussions at previous Governance and Audit Committees, through the CIPFA review, the view of the Chief Executive and the advice of the Head of Internal Audit and the Monitoring Officer to focus on the areas of finding and activity.

This statement is required to reflect the position at point of signature and therefore reflects a range of activities and issues that fall in 2022/23 financial year. It is important to note though that whilst some of those significant issues that have arisen or been reported on during 2022/23 are contemplated as part of the ongoing work that we are doing, they will formally be reported as part of the next Annual Governance Statement.

## **Scope of Responsibility**

Kent County Council is responsible for ensuring that services and operations are conducted in accordance with the law and proper standards. The authority has a specific responsibility to ensure that public money is used carefully and effectively and is properly accounted for. There is also a duty to continuously review and improve the way we work whilst offering services that are efficient and provide value for money.

Kent County Council operates an Executive scheme of governance with major decisions taken by nine Cabinet Members and a Leader executing the policies and strategies supported by a majority of Members. Where there are powers and functions reserved to the Council, these are taken by or on behalf of the full Council. The County Council sets an annual budget which determines the resource available to deliver these decisions, strategies, and functions.

During the 2021/22 financial year, the Council maintained the officer structure of its recent history. For completeness, in May 2022, the Council voted to change that structure and create a Chief Executive role starting from July 2022 and which is referenced elsewhere as part of this statement.

## **What is governance?**

Governance is about how the Council ensures it is doing the right things, in the right way, for the right people in a timely, inclusive, open, honest, and accountable manner. It comprises of systems and processes, cultures, and values by which the Council is directed and controlled. The Council has responsibility for conducting an annual review of the effectiveness of its governance framework, including the system of internal control.

Good governance is an essential part of local democracy and through the continued adoption of transparent processes Kent County Council will strive to ensure that strategies, policies, and operational matters are understood by Kent residents.

## **The Code of Corporate Governance**

Kent County Council's Code of Corporate Governance describes the principles applied by Kent County Council as the framework for good corporate governance, how we are achieving these, and the key policies and plans in place to support this.

During 2021/22 and in response to previous audit findings, the Council's Code of Corporate Governance was considered, reviewed and changed by Governance and Audit Committee. The updated Code was proposed and agreed by the County Council in March 2022.

The Code now follows the seven principles identified in 'Delivering Good Governance in Local Government (2016)', published jointly by the Chartered Institute of Public Finance and Accountancy (CIPFA), and the Society of Local Authority Chief Executives and Senior Managers (SOLACE), as a best practice framework for local authorities.

- Principle 1 – Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law.
- Principle 2 - Ensuring openness and comprehensive stakeholder engagement.
- Principle 3 - Defining outcomes in terms of sustainable economic, social and environmental benefits.
- Principle 4 - Determining the interventions necessary to optimise the achievement of the intended outcomes.
- Principle 5 - Developing the local authority's capacity, including the capability of its leadership and the individuals within it.
- Principle 6 - Managing risks and performance through robust internal control and strong public financial management.
- Principle 7 - Implementing good practices in transparency, reporting and audit to effective accountability.

All elected Members have an important role to play acting on behalf of the Council and their residents. Officers serve the Council as a corporate body rather than any political group, combination of groups or any individual Member.

Members and Officers have distinct codes of conduct, reflecting the legal differences between the two groups.

For Members there is the Kent Code of Member Conduct that is adopted under Section 27 (12) of the Localism Act 2011. It is the responsibility of Members to comply with the provisions of this code and these provisions are set out in the authority's Constitution.

All employees are required to abide by the Code of Officers Conduct, declare personal interests which may conflict with KCC's own interests, and treat all colleagues and customers with dignity and respect.

Members and Officers are expected to work together on a basis of mutual respect and trust. Members set the County Council's policy direction and Officers are responsible for implementing decisions taken and providing professional

advice. KCC's Scheme of Delegation sets out the framework for how specific delegations are allocated to Officers.

Kent Council Council's Cabinet Committees are constituted of elected Members and are established as advisory Committees of the Executive. Cabinet Committees review most key decisions prior to their being taken, together with related matters affecting Kent or its residents, in the subject area covered by the Committee. The Council also has a Scrutiny Committee whose role is to scrutinise the actions and decisions of the Executive and a suite of other Committees which undertake specific functions on behalf of the Council. The remit and membership of each Committee is set out on the County Council's website.

The County Council has designated Officers to act as each of the following: Head of Paid Service (Chief Executive), the Monitoring Officer (General Counsel), the Section 151 Officer (Corporate Director of Finance), Director of Adult Social Services, Director of Children's Services, and Director of Public Health. Their functions are explained in KCC's Constitution.

## **2021/2022 Operating Environment**

At the outset of this statement, it is important to record the operating environment and context in which services were delivered and this AGS was drafted.

The financial year 2021/22 was one of the most challenging operationally, strategically and fiscally in the Council's entire history. Whilst ultimately reporting a modest underspend, the financial year included unprecedented external pressures which impacted on the Council.

Early in the financial year was an election for all 81 Council seats with the campaign, voting and the count all conducted amidst continuing COVID restrictions. The election was successfully delivered within budget and without challenge.

The relevant onboarding procedures were undertaken for all Members, with new Members inducted into the Council. The first two Council meetings of the new administrative cycle were conducted at external venues to manage concerns and legal liabilities around COVID. Despite the considerable hard work of all concerned, this was inevitably imperfect as is recorded elsewhere in this statement and induction and the training offer is being relaunched to Members throughout 2023.

COVID continued to impact on the operating capacity of the Council even after the relaxation of restrictions in the summer of 2021. Similarly, services began to see growth in demand as the impact of the pandemic were reflected in communities across the Council.

As the financial year progressed, the Council, as with much of the sector, experienced unprecedented service demand which spending did not keep pace with

and representations were made by the Council to Government about the pressures within the system and within Kent specifically.

During the relevant period there were a number of significant issues that arose, primary amongst which was the experience of parents, carers and children with SEND as the Council made changes to transport arrangements for those children in early 2022 and the issuing of a section 5 report in relation to the operationally unavoidable decision to stop receiving children into the care of the local authority at the port of Dover, which was taken with the awareness of the breach of the Council's statutory duty.

The Council's position as a gateway authority brought additional challenges in relation to unaccompanied asylum seeking children and a robust position was adopted by the Council. The Government subsequently launched a new national approach which alleviated some of the pressure on the County and which will hopefully improve outcomes for the young people concerned.

The Council responded to the government schemes around resettlement from Afghanistan and Ukraine. The invasion of Ukraine and resulting geopolitical and financial consequences placed (and continues to place) further pressure on the operating position of the Council.

Elsewhere within the sector, government interventions, public interest reports and section 114 notices continued to occur as local authorities struggled under increasing pressures. Members and Officers were apprised of the key reports into other authorities to be sighted on the types of issues and activities that caused other local authorities to fall into significant difficulty.

These are things that are often said and are easily dismissed but it is important in this statement to explicitly reflect on the realities of the operating environment within the sector generally and within Kent specifically. Over the past decade, in real terms the Council's budget has significantly reduced whilst the demand from the public for support and services has significantly increased. In previous years, this statement has warned about the impact of this gap and it is important that Members and Officers keep the reality of the operating environment of the Council and the sector at the forefront of their minds when prioritising activity and funding.

The outcomes of two Ofsted inspections (into KCC's Children's Social Services and services across the public sector in Kent to Children with SEND) have reported since the financial year and will be more fully considered in the next AGS. However, given the materiality of some of the findings, these are reflected in some of the identified actions.

Local government needs to be seen in a national and international context with Kent County Council and its residents being impacted by events that may once have been considered exceptional but are now having to be factored in on a longer-term basis. Macro events have local impacts, and all tiers of local government are seeing ever more people turn to them for statutory and other services.

This statement concentrates on the things that can and should be done to make improvements and by its very nature focuses on things that are not operating well or where the realities of the operating environment have overwhelmed the way that things have previously been done. The statutory officers and previous iterations of this statement have rehearsed over previous years the continuous work that is ongoing to improve the way in which the Council operates and the way in which rules and governance work. The operating environment for the Council and its services is significantly changed and continues to dynamically adjust to the pace of activity, and the pressure to respond. Responding with agility, the Council has made improvements which have helped the Council avoid some of the more challenging, and headline grabbing, events at other Councils over the same period.

The combination of the wider operating environment and the cumulative impact of financial austerity on Councils since 2010 has produced significant governance challenges to the Council. There is evidence of decision-making not being executed appropriately, and tensions around different expectations of behaviour.

Since 2019, the Council's Annual Governance Statement has charted the challenges, issues, and actions to ameliorate these things but the reality for all of local government is stark.

As such, with each passing year the proactive steps and activity delivered in seeking to manage the challenges increases. The need to produce a robust statement has also increased and the delay this year is a reflection of the consequent need to secure additional assurances in some key areas in response to these pressures.

There is a clear separation of roles between Members and Officer in law – for both practical reasons and the need for democratic accountability. The knowledge and expertise of Officers is there to enable clear advice and support to be provided while Members take and scrutinise the strategic decisions, and to implement them once they have been taken. Processes to be introduced over the course of the coming year will focus on ensuring that these accountabilities are clear and that there is a proper record of Members and Officers acting effectively, accountably and appropriately in their distinct spheres.

It is ever more necessary that Officers must have the time and ability to advise fully as is expected of them with statutory and managerial responsibilities not inappropriately interfered with or diverted. Members can best have confidence in the advice being given to them if Officers are confident that it will be respected and appreciated.

It is also vital that the limited capacity of the Council is prioritised to the activities and challenges of greatest impact and importance to the Council.

## **Audit Review of AGS Process**

*Opinion from Head of Internal Audit will be inserted here in the final version of the Annual Governance Statement.*

### **Review of effectiveness**

Kent County Council has a responsibility to review the effectiveness of its governance. This review has been co-ordinated by the General Counsel and the Governance, Democracy and Law division and has involved a range of different activities.

Over recent years the way in which this review has been conducted has materially changed as a result of conversations between the statutory officers and the Head of Internal Audit. This aligns with the earlier comments in the statement about the need to transform to meet the changing realities of the Council and its services. Accordingly, the static pro forma documents which sought narratives were replaced with questionnaires that sought direct answers and came from reviewing other arrangements in other authorities and the experience of the statutory officers and the input and advice from the Head of Internal Audit and his team.

This year that approach has been modified with a changed question set for Corporate Directors and then subsequently tested with a further questionnaire sent to officers across the Council involved at an operational level in the delivery of governance. That additional questionnaire which was always part of the planned arrangements for this year and has been hugely helpful in providing granularity to inform some of the improvements that are planned for the year ahead and the 162 officers who responded are thanked for their time and assistance in that survey.

Again, as part of planned improvements for this year, the General Counsel and his team have met with the Leader and Cabinet to discuss decision making, governance and the changes needed as a result of the operating environment.

The review has also reflected on conversations with the Leaders of Opposition Groups and non-executive Members throughout the year who have raised concerns and issues.

As part of the review, the Chief Executive and General Counsel have reflected on the activity delivered and planned changes that have already formed part of the Council's ongoing strategy alongside the additional changes contemplated and needed to both respond to the operating environment, the future anticipated challenges, and the need to embed the necessary arrangements to reflect the introduction of the Chief Executive post.

The review has considered the Annual Opinion of the Head of Internal Audit, the audit reports and summaries that have been shared with statutory officers and the

report provided by Internal Audit into changes made to SEND transport arrangements for those children in early 2022. It has also included a review of key decisions taken within the relevant period.

As referenced elsewhere, the relevant period for this statement has presented a number of material challenges that have also resulted in further direct conversations between the General Counsel and relevant officers to seek assurance where there were inconsistencies and where clarity was required in order to form a judgment for the purposes of this statement.

Finally, the review has included a look at the best value/public interest/section 114 reports issued into or by other authorities to reflect on any learning necessary to prompt steps that can be taken now.

## **Key Findings**

- 1. The vast majority of the Council's activity is delivered in accordance with the governance arrangements. The written governance of the Council (as amended throughout the period) has been tested and found to be fit for purpose. Activity in the main is delivered in compliance with the letter and spirit of the Council's agreed practices and procedures.**
- 2. The process of updating the Council's governance is akin to painting the Forth Bridge and is a task that is constantly ongoing with considerable activity delivered during the year.**
- 3. The overheating mentioned in previous years has become a significant ongoing pressure in terms of meeting the statutory duties owed to individual residents and difficult decisions around prioritisation will need to be taken in order to ensure the effective provision of statutory services (see Section 5 Note below).**
- 4. It is vital that Cabinet Members and Corporate Directors carefully and fully ensure that all relevant information and the full range of advice is in place and considered before taking decisions for which they are accountable. The Council needs to improve the way in which scrutiny of these decisions and activity is undertaken, recognising its importance and then delivering a meaningful and effective programme within the context of resources with balanced non-executive participation.**
- 5. Contexts differ, but the findings and recommendations in reports into other local authorities, as well as sector-wide reports validate the changes already made to the Council's governance. However, there is further learning that can and will be embedded in the year ahead if Kent**

is to avoid making similar mistakes, particularly so in relation to the involvement and resourcing of corporate controls.

6. **Greater realism is required on the actual available capacity to deliver the core activities of the Council. There is evidence of considerable commitment on the part of Officers and Members to deliver for the people of Kent but there needs to be reflection on the realities of the available resources and what is actually achievable in order to remain sustainable.**
7. **Like many other organisations, “recovery” to some kind of “normal” from events of the past two years is not a possibility. Positive work has already been done and priority must continue to be given to reviewing our governance and procedures (by Members and operationally) given the new operating reality.**
8. **Greater focus must be paid to complying with the written governance and governance arrangements of the Council. This is widely done, but is not universal. Where these are seen as unhelpful, they can be changed (within certain limits) by using the established procedures for such changes, which is a better choice to purposely bypassing them. Non-compliance is a false economy – additional time and resources are required to restore matters to how they should have been, it leaves the Council more exposed to challenge and reputational risk, and diverts attention from delivering on the key corporate priorities. Ultimately, the cost is borne by the residents of Kent.**
9. **Where failures occur, given the operating environment the consequences for residents, Members, staff and the organisation alike are more severe than they were in times of greater resource.**
10. **The governance of the Council is clearly framed by legislation and while there is a lot of flexibility, there is much that is defined and non-negotiable – the distinct roles of Members and Officers, the division between Executive and Non-Executive function. These need to be understood and all activities undertaken within these parameters. These parameters need to be seen as enabling rather than restricting, with greater effectiveness achieved where activity better matches role.**
11. **There have been a range of issues and complaints raised with the Monitoring Officer regarding the experience and feeling of safety for all Members and Officers at meetings of the Council and its Committees.**

12. **Members must use the time in Committees and the available Officer capacity supporting that work to address the greatest priorities that the Council faces. The Council and its resources are too often diverted towards activity which is not a core function nor fundamental to the challenges that the Council and the sector face. Member behaviour and prioritisation in this regard must also be reviewed to avoid the challenges faced in Liverpool, Northamptonshire and elsewhere.**
13. **It has already been determined that there is a need to move to a more mandated system to underpin the necessary behaviours but that is stated here for completeness. The Council will define the activities that will be done and plan coherently around the resources needed to achieve these and activity will be delayed if it is not presented in sufficient time and/or in a manner compliant with this system.**
14. **It is vital that all decisions and delivery are subject to appropriate professional advice. This is a key theme of failures in other authorities and will be an area of considerable focus for the year ahead.**
15. **Proper consideration of equality, diversity and inclusion is vital to ensuring that the Council delivers services that meet the needs of all of our residents and staff.**
16. **The increasing levels of information gained through questionnaires for this year's AGS was vital. Whilst this resulted in inconsistencies and a need for further challenge it has resulted in further and important conversations that have improved the governance position of the Council.**
17. **The important role of Governance and Audit Committee and the Scrutiny Committee within our governance means that the continued professional development of Committee Members and effectiveness of these Committees is vital for the Council. The development of the Governance and Audit Committee should continue and proposals for a similar journey for the Scrutiny Committee are recommended.**

## **Report of the Monitoring Officer**

1. Section 5 of the Local Government and Housing Act 1989 designates the Monitoring Officer as having a range of responsibilities regarding the lawful conduct of the County Council. These responsibilities include a duty to

provide a report to all Members in circumstances where a contemplated decision, act or omission by or on behalf of the Executive leads (in their view) to maladministration or a contravention of the rule of law. During 2021/22 this duty was triggered by way of a report issued to the Council and considered at the meeting of 23 July 2021 ([Item 8 - Section 5 Report - UASC.pdf](#) ([kent.gov.uk](http://kent.gov.uk)))

2. In those circumstances, the Council made the choice (for the reasons set out in the report and elsewhere) to suspend compliance with their duties under the Children Act and other related legislation and guidance regarding collecting unaccompanied asylum seeking children from the Port of Dover.
3. In any given year, there is always the possibility that circumstances lead to situations where the Council may be said or may be found to have acted contrary to its statutory duties without this having been done deliberately or with full awareness of this being the case. Where there are such decisions, there is always an impact on individuals or groups of individuals.
4. This report identifies the operating environment and the challenges faced by the Council and has referred to overheating throughout. The issuing of a Section 5 report is intended to be used only as a last resort. To mitigate the risk of needed to do so in the future, there are a number of matters that he wishes to record here, and which inform both the findings and the consolidated actions.
5. There continue to be at any given time, a number of people who are not receiving the services to which they are entitled. This is, in part an inevitability of the challenges faced or on occasion because of mistakes made. It is important to note that this not because of a deliberate decision to avoid providing the services although it is recognised that the genesis of this does not alter the effect felt.
6. Notwithstanding the efforts made within the resources available, in relation to the following areas the Council continues to face challenges in meeting duties in all circumstances:
  - a. Deprivation of Liberty Safeguards
  - b. Children presenting as in need within our area
  - c. Services to Children and Young People with SEND
7. An assessment and plan will be developed for each of these areas as part of the consolidated AGS actions and will be reported to the mid-year review in June.

8. Finally, as part of the AGS, the Monitoring Officer normally provides an assurance that all decisions have been taken in accordance with the Council's governance. Members will be aware that given events during the relevant period that no such assurance is possible for this year. However, the Monitoring Officer is able to provide assurance that those decisions that were presented for key decision and taken through formal governance did meet the requirements of the Council's governance, albeit in a couple of cases the publication was slightly delayed.

## **Consolidated AGS Identified Actions**

Updates on on actions for prior years has been reported to the Governance and Audit Committee in presentations provided by the Monitoring Officer. However, as part of improvements introduced as part of this year's AGS we will be tracking actions in a different way going forwards.

Detailed below are the consolidated actions arising from this year's AGS and prior years. These will be monitored and updated in a timely manner for Members of Governance and Audit, Cabinet and Corporate Management team. They will also be formally reported on at the mid point of the AGS in June with a full written update. This is the further step in moving the AGS into a process which is continually living and updating throughout the year rather than waiting to the formal reporting points.

1. **Member Roles within the Governance – Formal definition and training provided to all Members relating to the roles as set out in the constitution and at law of:**
  - a. **Executive Members**
  - b. **Non-Executive Members**
  - c. **Opposition Members**
  - d. **Officers**
2. **New mechanism for the development and delivery of key decisions, Officer decisions under delegation and papers for Committees to include:**
  - a. **appropriate professional advice is sought and provided before the FED stage**
  - b. **meaningful assessment of equality, diversity and inclusion impacts before FED publication**
  - c. **reduced use of delegations for undefined purposes**
  - d. **new timetable to allow for corporate review**
  - e. **new templates for key decisions and papers to include advice on all options and costs (including commissioning and opportunity costs)**
  - f. **clear separation between advice from officers and decisions from and for politicians**



**13. Finalisation of detailed arrangements for operational level governance (arrangements for Officers and Members) pursuant to 6.15 (a) of the Constitution.**

Signature Section and statements to be added in Final Document in following order:

Monitoring Officer  
Corporate Director Finance  
Chief Executive  
Leader