

# Audit and Governance Committee

## Agenda

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**Date:** Thursday, 26th May, 2022  
**Time:** 10.30 am  
**Venue:** Committee Suite 1,2 & 3, Westfields, Middlewich Road,  
Sandbach CW11 1HZ

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

It should be noted that Part 1 items of Cheshire East Council decision making meetings are audio recorded and the recordings are uploaded to the Council's website

### **PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

**1. Apologies for Absence**

To receive any apologies for absence.

**2. Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

**3. Public Speaking Time/Open Session**

In accordance with paragraphs 2.24 of the Council's Committee Procedure Rules and Appendix on Public Speaking a total period of 15 minutes is allocated for members of the public to put questions to the committee on any matter relating to this agenda. Each member of the public will be allowed up to two minutes each to speak, and the Chair will have discretion to vary this where they consider it appropriate.

Members of the public wishing to speak are required to provide notice of this at least three clear working days' in advance of the meeting and should include the question with that notice.

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**OFFICIAL**

For requests for further information

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4. **Minutes of Previous Meeting** (Pages 5 - 14)

To approve as a correct record the minutes of the meeting held on 10 March 2022.

5. **Audit & Governance Action Log** (Pages 15 - 18)

To consider the Committees Action Log.

6. **External Audit 2021/22 Progress Report** (Pages 19 - 30)

To consider the External Audit 2021/22 Progress Report.

7. **Internal Audit Plan 2021/22: Progress Report** (Pages 31 - 48)

To consider the Internal Audit Plan 2021/22 Progress Report.

8. **Member Code of Conduct** (Pages 49 - 88)

To consider the revised Code of Conduct which reflects the Local Government Association model Code of Conduct for elected members, and incorporates best practice recommendations from The Ethics Report which can be recommended to full Council for adoption.

9. **Upheld Complaints to the Local Government Ombudsman** (Pages 89 - 98)

To consider the upheld complaints to the Local Government Ombudsman (LGO).

10. **Annual Risk Management Report 2021/22** (Pages 99 - 126)

To consider the Annual Risk Management Report 2021/22.

11. **Standing Item: Work Programme 2022/23** (Pages 127 - 134)

To consider the Committees Work Programme.

12. **Contract Procedure Rule Non-Adherences** (Pages 135 - 140)

To consider and note the number and reason for the WARNs approved.

13. **Exclusion of the Press and Public**

The reports relating to the remaining items on the agenda have been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 on the grounds that the matters may be determined with the press and public excluded.

The Committee may decide that the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 3 and 5 of Part 1 of Schedule 12A to the Local Government Act 1972 and public interest would not be served in publishing the information.

## **PART 2 – MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT**

### **14. Contract Procedure Rule Non-Adherences: Part Two (Pages 141 - 216)**

To consider and note the number and reason for the WARNs approved between 1<sup>st</sup> December 2021- 30<sup>th</sup> April 2022.

**Membership:** Councillors R Bailey, C Bulman, B Evans, A Harewood, M Houston, P Redstone, M Sewart, M Simon (Chair) and J Nicholas (Vice-Chair)

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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Audit and Governance Committee**  
held on Thursday, 10th March, 2022 in the Council Chamber, Municipal  
Buildings, Earle Street, Crewe CW1 2BJ

**PRESENT**

Councillor M Simon (Chair)  
Councillor D Marren (Vice-Chair)

Councillors R Bailey, C Bulman, B Evans, A Harewood, M Houston,  
P Redstone and M Sewart

**EXTERNAL AUDITORS/CONSULTANTS**

Muhammed Uzair Khan- Mazars (via Microsoft Teams)  
Jonathan Goolden- Independent Legal Advisor

**OFFICERS IN ATTENDANCE**

David Brown- Director of Governance and Compliance and Monitoring Officer  
Alex Thompson- Director of Finance and Customer Services and Section 151  
Officer  
Josie Griffiths- Head of Audit and Risk  
John David- Interim Director of Infrastructure and Highways (via Microsoft  
Teams)  
Michael Todd- Acting Internal Audit Manager (via Microsoft Teams)  
Alan Ward- Complaints Officer (via Microsoft Teams)  
Helen Davies- Democratic Services Officer

**64 APOLOGIES FOR ABSENCE**

There were no apologies for absence.

**65 DECLARATIONS OF INTEREST**

In the interests of openness and transparency, in respect of item 9) Member Code of Conduct Sub Committee Report (Handforth Parish Council) the Chair noted that three members of the Committee (Councillors Carol Bulman, Rachel Bailey and Margaret Simon) had formed a Hearing Sub-Committee for Handforth Parish Council, however none of the meetings went ahead as they were either postponed or cancelled.

In the interests of openness and transparency in respect of item 9) Member Code of Conduct Sub Committee Report (Handforth Parish Council), both David Brown, Director of Governance and Compliance and the Monitoring Officer and Jamie Hollis, Interim Head of Legal had received complaints made against them that related to Handforth Parish Council and these complaints were not able to be resolved prior to the meeting. As a consequence of this, both officers were not in a position to give any legal advice to the Committee on this matter.

It was noted that the Committee had been provided with an Independent Legal Advisor, Jonathan Goolden, but officers would remain the room to answer questions of fact if needed.

In the interests of openness and transparency, in respect of item 9) Member Code of Conduct Sub Committee Report (Handforth Parish Council), Councillor David Marren noted he had received email correspondence from and although he had read the information, it did not predetermine his view and he was approaching the meeting with an open mind.

Councillor David Marren declared a pecuniary interest in respect of agenda item 8) Internal Audit Plan 2022/23 as the report mentioned Orbitas and Councillor Marren will be the Chair of this Alternative Service Delivery Vehicle, (ASDV), for the next few weeks.

In the interests of openness and transparency, in respect of agenda item 10) Risk Management Update, Councillor Patrick Redstone declared he was a school governor and schools were referred to as part of the update. Councillor Redstone declared this interest during agenda item 10.

### **66 PUBLIC SPEAKING TIME/OPEN SESSION**

Visiting Councillor Liz Wardlaw attended the meeting and addressed the Committee in her role as Chair of the Scrutiny Committee in respect of agenda item 10) Risk Management Update and 9) Member Code of Conduct Sub-Committee Report (Handforth Parish Council).

Councillor Wardlaw noted her concern in relation to Strategic Risk and Corporate Priority SR2: NHS Funding and Integrated Care System specifically changes to NHS colleagues, the impact of changes on services and residents and the need to ensure budget setting is robust and joined up.

Councillor Wardlaw also noted concern in relation to Risk SR13: Reputation specially the reputation of the council in the wake of negative national interest that related to Handforth Parish Council. Councillor Wardlaw noted the need to be mindful of relationships with residents and applying professionalism and speed when dealing with enquiries as some feedback from parish councils alluded to a perceived wall of silence from officers and a lack of joined up thinking.

Ashley Comiskey-Dawson, the clerk to Handforth Town Council attended the meeting and spoke in respect of agenda item 9) Member Code of Conduct Sub-Committee Report (Handforth Parish Council). Mr. Comiskey-Dawson noted the high costs associated with the report before the Committee today arising from an initial complaint emanating over 12-months earlier. Mr. Comiskey-Dawson had experienced distress during this time but that he had followed up with the Local Government Ombudsman as he felt that a bullying culture was present by elected members at all levels of governance. He maintained a need for transparency and facts.

Chairman of Handforth Town Council, Councillor John Smith attended the meeting and spoke in respect of agenda item 9) Member Code of Conduct Sub-Committee Report (Handforth Parish Council). Councillor Smith gave reassurances to the Committee that Handforth had changed the name from Parish to Town in an attempt to rebuild the Town Council devoid of the negative

associations it had previously demonstrated. Councillor Smith noted that in the seven years he had served as a town and parish councillor, he had not experienced the positive partnership working now being demonstrated.

Councillor Smith made two requests to the Committee:

- a) He noted that information had been submitted about him that was inaccurate and requested that 60 pages be removed from the published report in an attempt to discourage the spread of inaccurate information; and
- b) The report contained correspondence that was irrelevant to the investigation and contained insulting comments. He requested those elements of the report be redacted or removed in its entirety.

## **67 MEMBER CODE OF CONDUCT SUB-COMMITTEE REPORT (HPC)**

Jonathan Goolden attended the meeting as an Independent Legal Advisor to the Committee. David Brown, Director of Governance and Compliance, and Monitoring Officer advised the Committee that he would remain in the room but was there to answer factual questions on the report only and that Jamie Hollis, Interim Head of Legal would add any detail.

The Interim Head of Legal advised the Committee that across the borough of Cheshire East, there were 108 parish councils comprising of over 1000 parish Councillors. The overwhelming majority had no interaction with the standards process at all.

A working group comprised of members from this Committee had been formed to reconsider the Cheshire East code of conduct and process. Sufficient and robust training and development would be offered to colleagues within Town and Parish Councils, to implement changes and be sufficiently adequate for councillor to challenge where appropriate and resolve local issues.

The Committee were advised that the council had received a number complaints about and between Handforth Parish Council, and this was the first practical application of the member complaints process in five years.

In total, between 2018-2020 a total of 21 formal complaints were received, and rose significantly after media attention in 2020/21.

The costs and resources to deal with these complaints were outlined within the report, and the Committee were advised that the time and proportionality were key to its deliberations on this matter.

Recommendation 2.1 b and c as outlined within the report had been amended after the papers had been published to reflect as follows:

2.1. That the Committee –

- b) Request that the Audit & Governance Committee Working Group consider any consequential amendments to the Code of Conduct and associated process arising from this report;
- c) [ Request publication of the investigation reports referred to in this report, following appropriate redaction, within 14 days of this meeting ]

The Committee challenged the amendment to the recommendations after publication of the agenda, Councillor David Marren gave reassurances to the Committee that it was normal practice to brief the Chair and Vice Chair of any changes post-publication, and the changes were due to the potential for confusion and lack of clarity on 2.1 b. The new wording made the recommendation clear, and the Chair was confident had these changes not been implemented now, the Committee would have had the same debate to change the wording.

The Committee were reminded that this was a forward looking review, to learn from and it would inform future process.

There was some discussion by the Committee that included:

- The acknowledgement that whilst it was appropriate to outsource this work, there was a substantial cost associated with this report;
- The adoption of the new process would help to mitigate anything like this happening in the future and the need to escalate complaints in a timely manner;
- The personal cost to those involved and the need to support the volunteers within the town and parish councils appropriately; and
- Any emails received by Members related to this matter tended to focus on looking backwards and addressed incidents already dealt with, if Members received such correspondence, they should be directed to the Monitoring Officer for him to deal with appropriately;

The Chair thanked the members of the Sub-Committee and the Committee for robust debate that demonstrated mutual respect. It was noted that this report had come at a financial cost of 25p to every resident of the borough. It was also noted that town and parish councillors work hard and were effective within the structure of democracy and governance, and the incidents at Handforth were exceptional.

The Committee had a substantial debate that noted the importance of impressing a positive working culture, behaviours and conduct for new councillors during their induction period. Where the services of the Monitoring Officer have not been employed by town and parish councillors, issues had been resolved internally by councillors supporting and challenging with mutual respect and tolerance. As part of the lessons learned, issues arose when there was a lack of cooperation by people to engage as part of the process, the Committee were advised that compliance with standard was an important aspect of ethical conduct. The council was working to ensure the resources were available to address issues at the appropriate time.

The Committee were in agreement with part a) and b) of the current recommendation and moved to c) to discuss further the question of publication.

The earlier comments from the public speakers in respect of redactions and redrafts were noted as part of a learning opportunity for code of conduct working group. The current code of conduct favoured confidentiality over transparency.

The Independent Legal Advisor gave the Committee some context in relation to the legal position of confidential information vs that in the public domain.



Breaches of the code of conduct were considered in light of councils arrangements, an assessment decision was taken with the assistance of independent persons and the outcome would be either: no action, some action or refer for investigation. Any unsubstantiated allegations would be deemed confidential as the privacy would exceed public interest in respect of transparency. However in the case law: *Deadman vs Information Commissioner* this instance saw that the balance had shifted person, the individual concerned was no longer a councillor, but could still stand and by then the balance had shifted to public interest and transparency.

Should the council receive any Freedom of Information (FOI) requests it would be at liberty to publish the reports in principle subject to redactions.

The Interim Head of Legal advised that the council could comply with legal deadlines for publication plus any redaction that needed to be done.

The Independent Legal Advisor added that in terms of publication of report vs report and schedule and precedent, his advice was to publish reports as this would be proportionate to balance transparency to avoid disclosure of personal data. This would not prejudice how the council drafted arrangements for the future- as this was an exceptional matter. Report publication would not set a binding precedent.

The Chair summarised the main points:

- thanks were extended to the public speakers, the points raised during public speaking time did inform the discussion today;
- The whole experience had been an exercise in learning and handling such a complex complaint. Town and parish councillors were volunteers and they were greatly valued what the work they undertook for the community;
- There were lessons to take away in terms of managing work load and resources;
- This Committee needed assurances in respect of the code of conduct training, and the points raised within the reports would inform continuing working group discussions; and
- Whilst the current process favoured not publishing the focus on the particular report was balanced on confidentiality vs public interest.

Finally the Independent Legal Advisor commended to the working group and Committee the Local Government code of conduct and guidance and process guidance for consideration.

The Committee thanked the public and the valuable experience and advice from the Independent Legal Advisor and officers who have carried the work load ahead of this item coming to Committee.

RESOLVED: That:

- a) the report be received and noted;
- b) any consequential amendments to the Code of Conduct and associated process arising from this report be considered by the Audit & Governance Committee Working Group;

- c) following appropriate redaction, within 14 days of this meeting (25 March 2022), the investigation reports referred to in this report be published.

## 68 MINUTES OF PREVIOUS MEETING

The Committee considered the minutes of the previous meeting and requested the following changes:

Item 9) Statement of Accounts, page 9 to read:

- The Committee asked to record its thanks to all those in the audit team and external audit team and congratulations to the work being carried out.

Councillor Mike Sewart noted that on page 6, item 53) update on the local ward budgets and 'Top Up' service pilot scheme the substantive issue was for the Highways and Transport Committee and they would be providing the outcome on the future of the scheme.

Councillor David Marren added that the Committee had been advised that a copy of the government criteria for the Highways funding had been promised to the Committee but to date had not been received.

Whilst he appreciated the substantive issue was for the Highway and Transport Committee, the amendment from Council did not mention a pilot scheme, the Chair agreed that it appeared that a decision had been implemented that had not been agreed and this was a matter that needed to be resolved.

RESOLVED:

That subject to the changes outlined above, the minutes be accepted as a correct and accurate record.

## 69 ACTION TASKS

The Committee reviewed the action tasks from the previous meeting.

Highways Funding: was deferred to Josie Griffiths- for a potential item on the Work Programme.

Partnerships Funding: David Brown, Director of Governance and Compliance and Monitoring Officer circulated a note to the Chair and Vice-Chair for consideration ahead of anything further being added to the Work Programme.

The other items remained on the Action Log for progression as soon as possible. It was noted that John David, Interim Head of Highways and Infrastructure had been present via Teams to address the Committee on item that related to the Update on the Local Ward budgets and 'Top Up' service pilot scheme but had to leave so his item would return to a future committee meeting.

RESOLVED:

That the Action Log be received and noted.

## **70 EXTERNAL AUDIT PROGRESS AND UPDATE REPORT**

Muhammed Uzair Khan, External Auditor from Mazars attended the meeting via Microsoft Teams and updated the Committee on the report and update.

The Committee were advised that a national evaluation issue had been identified that related to the value of infrastructure assets. Two major suppliers had communicated to their clients intention to pause sign-off on all local authority audit reports and opinions until this issue could be resolved. Mazars took the same approach with Cheshire East, risk was minimal and should not have a material impact on service delivery, however it could affect the amount the council value assets.

The Committee thanked the External Auditor and Alex Thompson, Director of Finance and Customer Services and Section 151 Officer for their responses to this issue, and noted that the valuation point of assets are always a point in time and never fluid.

**RESOLVED:**

That the verbal update be received and noted.

## **71 CERTIFICATION OF GRANTS AND CLAIMS**

Alex Thompson, Director of Finance and Customer Services and Section 151 Officer advised the Committee that there were two items to note within the report for this item and they related to external audit and teachers pension.

**RESOLVED:** That

- a) the findings of the external audits regarding these certification processes be received and noted;
- b) no errors or exemptions were found following the testing of the 2020/21 Housing Benefit Subsidy claim and no recommendations for improvements were made to the DWP be noted.
- c) a number of minor findings were reported to management following the audit of the Teachers' Pension Certificate be noted.

## **72 INTERNAL AUDIT PLAN 2022/23**

Councillor David Marren left the room.

Josie Griffiths, Head of Audit and Risk advised the Committee that the current plan was based on current resource and priorities rather than the traditional 3-year plan previously used, this was to enable agility and the focus to be on emerging issues.

Current resources would ensure sufficient work to be undertaken to deliver an annual opinion for 22/23, but fragility within the resource was noted as two posts were being covered with temporary posts. This was allowing work to be delivered efficiently and effectively.

The Chair thanked the Head of Audit and Risk for the team response and efforts during challenging times without a full suite of staff.

There was some discussion on:

- Complaints via schools that the B4B financial system had not worked properly for 3-months, the Head of Audit and Risk advised there was ongoing planned learning from the B4B system but any feedback from Members would be helpful;
- The Audit team was carrying small vacancy but that had not impacted on work, options that related to apprenticeships had been explored, but the recruitment issue to this sector was being seen at a national level. Whilst there was a place for agency staff, there was an economic cost and a potential risk that dependency on that resource could leave the service vulnerable;
- Internal Audit provided services to PATROL and Cheshire East was the Accountable body for the Cheshire and Warrington Local Enterprise Partnership (CWLEP), the Committee noted that in view of bringing in income from other sectors the council must have assurances on the permanence of the work force to avoid paying additional costs for temporary/agency staff but then losing income from that work outside of capacity. The Committee requested an update to next committee and a watching brief on this area of work.

It was noted by the Committee that the external auditors had stayed on the Teams call and were interested in the discussions by the Committee.

RESOLVED: That:

- a) the Internal Audit Plan 2022/23 be received and noted;
- b) priority work during quarters 1 and 2 along with additional areas for consideration during quarters 3 and 4 be received and noted; and
- c) progress against the plan, and the priorities for the last 6 months be reported back as part of the regular updates to the Committee.

### **73 RISK MANAGEMENT UPDATE**

Councillor David Marren came back into the room.

Josie Griffiths, the Head of Audit and Risk introduced the report to the Committee and invited any questions or comments.

The Committee noted the earlier comments that related to reputational risk raised during public speaking time by Councillor Liz Wardlaw. Some Committee members had also had similar feedback from parish councils in respect to a perceived wall of silence from officers and a lack of joined up thinking. There was some discussion about the need to understand customers in times of crisis and how front-line officers can best respond to them.

There was an acceptance from the Committee that Place-based activities for the council posed the greatest risk to reputation given that residents will judge these services more because they have direct experience with them.

RESOLVED:

That the Strategic Risk Update for Quarter 3 2021/22 be received and noted.

#### **74 APPOINTMENTS**

Jamie Hollis, Interim Head of Legal introduced the report to the Committee that provided an update to the Committee on the appointment of co-opted independent members to the Audit and Governance Committee, and a briefing on the appointments process for the Council's Independent Persons.

Currently one co-opted member of the Committee had been recommended for approval from a panel that consisted of Members from this Committee and two Independent Persons had been recommended for approval via for approval by officers who had undertaken a recruitment and assessment process.

The Committee noted there was still one position open for the remaining co-opted Independent Member and asked that this vacancy be advertised as soon as possible.

RESOLVED:

That:

- a) the report be received and noted;
- b) the co-option of the first Independent Member to the Committee (identified within the report) for a period of 4 years; and the appointment of two Independent Persons (identified within the report) under the Localism Act 2011, for a period of 4 years be recommended to full Council; and
- c) the remaining co-opted independent member vacancy for the Audit and Governance Committee be readvertised using the same process and member panel to shortlist and interview and any recommendations be considered by this Committee before any endorsement to full Council.

#### **75 UPHELD COMPLAINTS TO THE LOCAL GOVERNMENT OMBUDSMAN**

Alan Ward, Complaints Officer attended the meeting via Microsoft Teams to introduce the report. The Committee were advised there had been two upheld complaints between 1 December 2021 and 31 January 2022. One related to Special Educational Needs and Disabilities (SEND), and one to Highways.

The Committee considered the report and the following points were made:

- The costs attributed to upheld complaints through delays by the council;
- The acknowledgement that officers get things wrong but when complaints were upheld the possibility of appropriate measures to motivate improvement; and
- Reports to Councillors via the Town and Parish Councils that complaints are not resolved and the impact of this on the reputation of Cheshire East Council.

The Committee considered what reassurances could be implemented, the Director of Governance and Compliance and the Monitoring Officer noted that the

Committee had agreed, as part of the Action Tasks, that a consolidated report of upheld complaints would be compiled to help identify themes and trends. The Chair requested that each theme be considered on its own merit to recognise lessons learned and seek reassurances that things will get better and that the reputation of the Council would not drop.

RESOLVED:

That the report be received and noted.

**76 STANDING ITEM: WORK PLAN 2021/22 AND 2022/23**

There was a request by the Committee for further detail on the Medium Term Financial Strategy Earmarked Reserve that included criteria of spend and spend to date.

The Director of Finance and Customer Services and Section 151 Officer noted that the same question had been raised at Corporate Policy Committee and as a result this had been added to the Work Programme of Finance Sub Committee for June where speculative figures would be used not forecasts. To avoid duplication of work this Committee could attend that meeting and receive their report and minutes for assurance.

RESOLVED:

That:

- a) the Work Programme be received and noted;
- b) the Work Programme be brought back to the Committee throughout the year for further development and approval;
- c) the Chair and Vice Chair meet John David, Interim Director of Infrastructure and Highways via Microsoft Teams to discuss potential items for this Committees Work Programme and shared with the Committee;
- d) the item on the Medium Term Financial Strategy Earmarked Reserve be added to this Committees Work Programme to review the decisions made by Finance Sub-Committee; and
- e) an item on Reputational risk and assurances on the customer experience be added to this Committees Work Programme.

The meeting commenced at 10.30 am and concluded at 2.38 pm

Councillor M Simon (Chair)

## Audit and Governance Committee - Action Log

Date of Meeting: 26 March 2022

Meeting Date	Item No	Report Title	Action	Officer	Deadline for Action
25 November 2021	5	Action Tasks	Previous Outstanding Action: Briefing session to be arranged for the Committee on the Provision of Services to Schools.	Josie Griffiths/ Michael Todd	Completed 13 May 2022.
17 January 2022	6	Update on the Local Ward budgets and 'Top Up' service pilot scheme	<p>There had been some discussion by the Committee on:</p> <ul style="list-style-type: none"> <li>• whether the £4,200 per Member was enough funding to make a significant difference to communities whilst balancing the loss of that budget from the overall highways revenue budget;</li> <li>• the implication that there would be funding increases next year;</li> <li>• the assurance of the governance of the scheme; and</li> <li>• who would conduct a review of the pilot?</li> </ul>	Previously Andrew Ross, now John David	Update: John David, Interim Director of Highways and Infrastructure attended the meeting on the 10 March as planned, but the previous items overran. This item remains to be rescheduled.
17 January 2022	11	Upheld Complaints to the LGO:	The Committee were advised that the council has implemented a new Customer Experience Strategy with an emphasis on improving consistency for customers and	Jane Burns/David Brown/Alex Thompson	Update: Alan Ward has draw up a consolidated report of upheld complaints to held identify themes and trends. The report is in the

			<p>learning and apologising when things go wrong. The Chief Executive has given a personal commitment to championing customer services.</p> <p>The Committee considered if there was potential to add an item to the Committee's Work Programme on the general customer experience.</p>		<p>preparatory draft stage at the moment ahead of CLT discussion on 29 June.</p>
10 March 2022	8	Internal Audit Plan 2022/23	<p>Councillor Rachel Bailey had concerns about the permanent resource within the Internal Audit Team and asked for continued assurances on this matter.</p>	Josie Griffiths	<p>Update: The permanent resource available to Internal Audit is subject to regular review to ensure that the team are able to deliver sufficiently evidenced work to support the provision of the Annual Audit Opinion.</p> <p>Where gaps in capacity and/or specific skills are identified this is addressed through the use of temporary resource.</p> <p>This was the case for the second half of 2021/22 and remains in place for the first quarter of 2022/23.</p> <p>A decision will be made in relation to extending these arrangements based upon the ongoing requirements of the team.</p>



					At the current time, both the Head of Audit & Risk and the acting Internal Audit manager are satisfied that the team is sufficiently resourced.
10 March 2022	8	Internal Audit Plan 2022/23	Councillor Patrick Redstone had concerns about the financial implications on Cheshire East Council in relation to the B4B programme.	Jane Burns David Brown	Update: A paper went to Shared Services Committee on the 25 March 2022.  A briefing session for Cllr Redstone to be facilitated.
10 March 2022	9	Member Code of Conduct Sub-Committee Report (HPC)	David Brown to draft a letter to the Chair and Vice-Chair advising how much the Handforth complaints report cost with officer/member/external support costs factored in.	David Brown	Update: The information was circulated to the Working Group and is also on the transparency page of the Council website.
10 March 2022	13	Standing Item: Work Programme 2021/22 and 2022/23	The Chair and Vice Chair to meet John David, Interim Director of Infrastructure and Highways via Microsoft Teams to discuss potential items for this Committees Work Programme and shared with the Committee.	Helen Davies	Update: Helen to facilitate via Microsoft Teams with Chair and Vice-Chair, David Brown and John David.
10 March 2022	13	Standing Item: Work Programme 2021/22 and 2022/23	Consider if an item on the Smoothing Fund be added to this Committees Work Programme to review the decisions made by Finance Sub-Committee.	Alex Thompson	Update: To be considered on the 26 May 2022.

10 March 2022	13	Standing Item: Work Programme 2021/22 and 2022/23	An item on Reputational risk and assurances on the customer experience be added to this Committees Work Programme.	Helen Davies Josie Griffiths	Update: Risk Management Training to be facilitated in early June to better equip Members on approaching the subjects of reputational risk and customer experience.
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# External Audit Progress Report

Cheshire East Council

May 2022



1. Audit Progress
2. National publications

# 01

## Section 01: **Audit Progress**

# Audit Progress

## Purpose of this report

This report provides the Committee’s May 2022 meeting with updates on:

- the 2020/21 audit work;
- the 2021/22 audit planning process; and
- recent relevant reports and publications for your information (Section 2).

## 2020/21 Audit

The 2020/21 accounts work is virtually complete. However, due to a national issue regarding accounting for infrastructure assets no further progress can be made at this time. We, and the Council, are awaiting further information from the sector on the proposed way forward in order to complete and conclude the audit.

The draft Auditor’s Annual Report (including the Value for Money commentary) is substantially complete. We plan to issue our Auditor’s Annual Report promptly after signing the audit opinion.

There are no additional accounts audit matters to report to the Committee and no matters of concern to highlight in relation to the Council’s arrangements for securing Value for Money.

## 2021/22 Audit

We will share our formal 2021/22 Audit Strategy Memorandum with the Committee at a future meeting. At this stage we do not expect any significant changes to the audit risk profile and the overall audit approach required under the NAO Code of Audit Practice, and we have not identified any significant changes to the financial reporting requirements under the 2021/22 CIPFA Accounting Code. The operating and financial environment for Councils continues to be challenging and it is important that our audit plan is as up to date as possible and is properly tailored to the risks and issues facing the Council.

We have continued to update our audit planning and our interim audit visit (including our normal system walkthroughs and any early substantive testing) was carried out in March/ April 2022.

Mazars held their annual Local Government Accountant’s workshops in February 2022, which were attended by members of the Council’s finance team. We will follow up any specific issues with Management.

# 02

## Section 02: **National publications**

# National publications

	Publication/update	Key points
<b>Chartered Institute of Public Finance and Accountability (CIPFA)</b>		
1.	Emergency proposals for an update of the 2021/22 Code of Practice on Local Authority Accounting in the United Kingdom and the 2022/23 Code	CIPFA published a consultation on emergency proposals for the update of the 2021/22 (and 2022/23) Code. They were aimed at improving the completion rates for publication of audited accounts and include: <ul style="list-style-type: none"> <li>• delaying the implementation of IFRS 16 for at least 1 year, so the implementation date would now be 1 April 2023 at the earliest; and</li> <li>• allowing for an optional pause of the property revaluation cycle.</li> </ul>
<b>Department for Levelling Up, Housing and Communities</b>		
2.	Measures to improve local audit delays and accounts and audit timetable confirmed	DLUHC announced a new package of measure to support the improved timeliness of local audit. These included additional funds and an extension of the deadline for publishing accounts.
3.	The council tax rebate 2022-23 – billing authority guidance	Guidance to billing authorities on administering the council tax rebate to support households with the rising cost of living.
<b>National Audit Office (NAO)</b>		
4.	AGN/03 – Auditor’s work on Value for Money Arrangements – Updated Guidance	NAO has updated its guidance and confirmed there are no significant changes to the expected approach or timetable.
5.	Framework to review portfolios	This framework provides a structured, flexible approach to reviewing models. It is intended to aid those commissioning or undertaking analysis of a model with the aim of determining whether the model is robust and reasonable.
6.	Good Practice in Annual Reporting	This sets out our good practice principles for good annual reporting and provides illustrative examples taken from public sector organisations who are leading the way in this area.
<b>Mazars</b>		
7.	Horizon Scanning – Challenges and Opportunities for the Public Sector in 2022	Mazars has issued its annual Horizon Scanning document setting out for Management and Internal Auditors the topics for consideration in improvement and Internal Audit plans.
8.	Local Government Accountants’ Workshop 2022	Mazars has held its annual workshops with clients in relation to the key issues for this year’s accounts and audit.



# NATIONAL PUBLICATIONS

## CIPFA

### 1. Emergency proposals for an update of the 2021/22 Code of Practice on Local Authority Accounting in the United Kingdom and the 2022/23 Code, February 2022

CIPFA LASAAC has issued an exceptional consultation on time limited changes to the code to help alleviate delays to the publication of audited financial statements. Only 9% of local authority accounts in England met the audit publication deadline of 30 September 2021. The consultation closed on 3 March 2022.

In December 2021, the Department of Levelling-up Housing and Communities asked CIPFA LASAAC to consider ways in which the code may ameliorate this crisis position. CIPFA LASAAC considered this request and has issued this exceptional consultation, which explores two possible changes that might be made as an update to the 2021/22 code and to the agreed position in the 2022/23 code. After considering a wide range of options CIPFA LASAAC decided to explore two approaches:

- an adaptation to the code to allow local authorities to pause professional valuations for operational property, plant and equipment for a period of up to two years (though the initial proposal is for the 2021/22 financial year); this approach also explores the use of an index to be used to increase or reduce that valuation
- deferring the implementation of IFRS 16 *Leases* for a further year and reversing the planned changes to the 2022/23 code to implement that standard.

The consultation also shows the wide range of options that CIPFA LASAAC considered, which includes some which the board considered were outside of its terms of reference.

<https://www.cipfa.org/policy-and-guidance/consultations/emergency-proposals-for-update-of-202122-and-2022223-codes>

# NATIONAL PUBLICATIONS

## Department for Levelling Up, Housing and Communities

### 2. A new package of measures to support the improved timeliness of local audit, December 2021

This publication sets out a range of measures agreed with key partners to support the timely completion of local government audits and the ongoing stability of the local audit market. The measures include:

- Steps to increase the number of auditors with skills to carry out the work;
- Additional funding to support increases in audit fees; and
- Extension of the audit deadlines to 30 November 2022 and 30 September for 2023 onwards.

[https://www.gov.uk/guidance/measures-to-improve-local-audit-delays?utm\\_medium=email&utm\\_campaign=govuk-notifications&utm\\_source=81365e1a-e6b1-4c1b-bce1-b5ef8fafef6f&utm\\_content=daily#section-4-longer-term-measures-to-help-stabilise-the-market-and-address-long-term-supply-issues](https://www.gov.uk/guidance/measures-to-improve-local-audit-delays?utm_medium=email&utm_campaign=govuk-notifications&utm_source=81365e1a-e6b1-4c1b-bce1-b5ef8fafef6f&utm_content=daily#section-4-longer-term-measures-to-help-stabilise-the-market-and-address-long-term-supply-issues)

### 3. A new package of measures to support the improved timeliness of local audit, February 2022

The government has announced a package of support known as the Energy Bills Rebate to help households with rising energy bills, worth £9.1 billion in 2022-23. This includes:

- A £200 discount on their energy bill this autumn for domestic electricity customers in Great Britain. This will be paid back automatically over the next 5 years.
- A £150 non-repayable rebate for households in England in council tax bands A to D, known as the Council Tax Rebate.
- £144 million of discretionary funding for billing authorities to support households who are in need but are not eligible for the Council Tax Rebate, known as the Discretionary Fund.

This guidance covers the operation and delivery of the Council Tax Rebate and Discretionary Fund. The Department for Business, Energy and Industrial Strategy will separately set out details on the energy bill discount scheme in a consultation in the spring.

Funding will be paid to billing authorities in March 2022. Funding for the Council Tax Rebate will be based on the number of eligible properties recorded in the 2021 council tax base statistics.

<https://www.gov.uk/government/publications/the-council-tax-rebate-2022-23-billing-authority-guidance/support-for-energy-bills-the-council-tax-rebate-2022-23-billing-authority-guidance>

# NATIONAL PUBLICATIONS

## National Audit Office

### 4. AGN/03 – Auditor’s work on Value for Money Arrangements – Updated Guidance, December 2021

NAO has updated its guidance and confirmed there are no significant changes to the expected approach or timetable for 2021/22 audits.

The guidance can be seen at this link: <https://www.nao.org.uk/code-audit-practice/guidance-and-information-for-auditors/>

### 5. Framework to review portfolios, January 2022

Government broadly defines a portfolio as the programmes, projects and wider work required to meet a common objective. A portfolio differs from a programme, where all activities need to be delivered to achieve the end goal, as there can be choices over the activities undertaken. Our work across government has touched on portfolios brought together to achieve high-profile objectives, such as achieving net zero carbon emissions by 2050 or modernising the justice system. Through this work we have seen the value of portfolio thinking in helping prioritise activities to meet a strategic objective. Portfolio thinking can improve the chances of success by bringing everything together to translate objectives into activities and make effective decisions. It can help to reinforce:

- a shared understanding of an objective across decision-makers, practitioners and stakeholders to bring together the activities that can achieve it;
- a whole system and longer-term perspective to help understand the totality of change required to meet an objective;
- an understanding of the aggregate risk, to then assess this against the risk appetite and tolerance of an organisation; and
- complete and comparative information to help consider all the activities within the portfolio and make effective decisions.

<https://www.nao.org.uk/report/framework-to-review-portfolios/>

### 6. Good Practice in Annual Reporting, January 2022

This sets out our good practice principles for good annual reporting and provides illustrative examples taken from public sector organisations who are leading the way in this area.

Our guide draws on examples of good practice from within each of the six sections of an Annual Report: Strategy, Risk, Operations, Governance, Measures of success, Financial performance, External factors

<https://www.nao.org.uk/report/good-practice-in-annual-reports/>

# NATIONAL PUBLICATIONS

## Mazars

### 7. Horizon Scanning – Challenges and Opportunities for the Public Sector in 2022, December 2021

Mazars has issued its annual Horizon Scanning document setting out for Management and Internal Auditors the topics for consideration in improvement and Internal Audit plans.

The document states that as the economy and society move into an endemic state of virus management, local authorities have found themselves in an unenviable position. They must balance pre-COVID-19 service demand within a new normality that has exacerbated the need for public services, along with an emptying high street, hybrid working, environmental awareness, and increased personal debt. Balancing the budget has never been more challenging, nor is internal audit so critical to an organisation's resilience. This year's Horizon Scanning report breaks down the assurance requirements of a local authority into five categories:

1. financial resilience,
2. council services,
3. IT,
4. Environmental, Social and Governance (ESG) considerations; and
5. fraud.

Within these headings the report has broken down the detail and shared considerations for internal audit plans.

The guidance can be seen at this link: <https://www.mazars.co.uk/Home/Industries/Public-Social-Sector/Transforming-your-organisation/Horizon-Scanning/Internal-audit-planning-Financial-considerations>

# NATIONAL PUBLICATIONS

## Mazars

### 8. Local Government Accountants' Workshops, February 2022

Mazars has held its annual workshops with clients in relation to the key issues for this year's accounts and audit.

The topics included:

- External Audit Market and reforms – updating attendees on the issues being faced and the steps being taken to strengthen the arrangements.
- Audit delivery 2020/21 – an update on the delivery of 2020/21 audits nationally.
- PSAA procurement – an update on the process for the letting of the 5 year contracts for 2023/24 onwards.
- 2021/22 timetable – an update on the timetable set out in the regulations, the current proposals and likely timetable.
- CIPFA emergency proposals 2021/22 and 2022/23 – an update on the CIPFA proposals regarding IFRS16 deferral and pause PPE valuations and the possible implications.
- MRP regulations – an update on the proposed changes which are designed to address the Government's concerns over the reasonableness of the policies being applied.
- PPE and Investment Property Valuations – an update on the common areas of concern and issues for audit focus.
- Estimation and judgements – an update on the impact of the new auditing standard and issues for audit focus.
- Expected Credit Loss – a reminder of the expectations under IFRS9 and common areas of concern.
- IFRS16 Preparations – a reminder of the key issues for clients to consider as part of the preparations for the implementation of the accounting standard.

Slides from the workshop were provided to attendees and additional copies can be provided if needed.

# Contact

## Mazars

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## **Audit & Governance Committee**

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<b>Date of Meeting:</b>	26 May 2022
<b>Report Title:</b>	Internal Audit Update April 2021 – February 2022
<b>Report of:</b>	Jane Burns, Executive Director of Corporate Services
<b>Report Reference No:</b>	AG/23/21-22
<b>Ward(s) Affected:</b>	All

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### **1. Purpose of Report**

- 1.1. The purpose of this report is for the Committee to receive an update on work undertaken by Internal Audit between April 2021 and February 2022 and how this, along with work that was planned for the remainder of the financial year contributes to the Annual Internal Audit Opinion for 2021/22.

### **2. Executive Summary**

- 2.1. The report contains the following:
  - 2.1.1. a summary of the audit work carried out between April 2021 and February 2022
  - 2.1.2. a summary of the performance of the internal audit function against its performance measures and targets
  - 2.1.3. a summary of work that was ongoing at the end of February 2022 along with work that has been carried forward into 2022/23.

### **3. Recommendations**

- 3.1. That the Committee notes and considers the contents of the Internal Audit Update Report.

### **4. Reasons for Recommendations**

- 4.1. The Public Sector Internal Audit Standards (PSIAS) require the Council's Chief Audit Executive (Head of Audit and Risk) to regularly report on

emerging issues in respect of the whole range of areas to be covered in the annual report.

- 4.2. In order to meet this requirement, the Committee receives regular reports on Internal Audit's performance to support the effectiveness of the internal audit process

## **5. Other Options Considered**

- 5.1. No other options are available as it is a requirement of the PSIAS to provide regular updates to Committee.

## **6. Background**

- 6.1. The Council is responsible for establishing and maintaining appropriate risk management processes, control systems, accounting records and governance arrangements. Internal Audit plays a vital part in advising the Council, via the Audit and Governance Committee, that these arrangements are in place and operating properly. The annual internal audit opinion informs the Annual Governance Statement. The Council's response to internal audit activity should lead to the strengthening of the control environment and, therefore, contribute to the achievement of the Council's objectives.
- 6.2. It should be noted that Internal Audit's risk based approach includes focussing on areas where issues are known or expected to exist. Clearly this approach adds value to the organisation, but, by its nature, may also result in lower overall assurance levels.
- 6.3. A report summarising the work undertaken, the issues identified and the actions required is produced for each review undertaken. The process of reviewing the report from draft to final ensures that the findings are confirmed to be factually accurate, and that the management actions will result in improvements to the control environment. Draft reports are agreed with the appropriate managers, and the Final reports are shared with the relevant Executive Director. The implementation of agreed actions is monitored through the follow up process, and performance in this area is reported regularly to the Corporate Leadership Team and the Committee.

## **7. Consultation and Engagement**

- 7.1. This is a progress update report on the work of Internal Audit and as such no consultation and engagement has been necessary.

## **8. Implications**

- 8.1. **Legal**



8.1.1. All local authorities must make proper provision for internal audit in line with the 1972 Local Government Act (S151) and the Accounts and Audit Regulations 2015. The latter states that authorities “must undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards or guidance.”

8.1.2. The guidance accompanying the Regulations recognises that with effect from 1st April 2013, the Public Sector Internal Audit Standards (PSIAS) represent “proper internal audit practices”. The PSIAS apply to all internal audit service providers within the UK public sector.

## **8.2. Finance**

8.2.1. In accordance with the PSIAS, the Audit and Governance Committee should ensure that the function has the necessary resources and access to information to enable it to fulfil its mandate, and is equipped to perform in accordance with appropriate professional standards for internal auditors. A small contingency allocation has been included at this stage.

8.2.2. The Internal Audit Plan 2021/22 was prepared, based on current resources, to cover the core areas of work required to deliver an annual audit opinion. This will be compared to resource availability as part of establishing the plan and in monitoring progress against the plan.

8.2.3. If an imbalance between the two arises the Committee will be informed of proposed solutions. Matters that jeopardise the delivery of the audit plan or require significant changes to it will be identified, addressed and reported to the Committee.

## **8.3. Policy**

8.3.1. There are no direct policy implications.

## **8.4. Equality**

8.4.1. There are no direct implications for Equality and Diversity.

## **8.5. Human Resources**

8.5.1. There are no direct implications for Equality and Diversity.

## **8.6. Risk Management**

8.6.1. Delivery of an appropriately balanced and focused Internal Audit Plan supports the Council’s ability to effectively and efficiently identify and

manage its risks, with the implementation of recommended actions designed to deliver improvements in governance and the control environment.

#### **8.7. Rural Communities**

8.7.1. There are no direct implications for rural communities.

#### **8.8. Children & Young People/Cared for Children**

8.8.1. There are no direct implications for children and young people.

#### **8.9. Public Health**

8.9.1. There are no direct implications for public health.

#### **8.10. Climate Change**

8.10.1. There are no direct implications for climate change

<b>Access to Information</b>	
<b>Contact Officer</b>	Josie Griffiths Head of Audit and Risk <a href="mailto:josie.griffiths@cheshireeast.gov.uk">josie.griffiths@cheshireeast.gov.uk</a>
<b>Appendices</b>	Appendix A: Internal Audit Update April 2021-February 2022
<b>Background Papers</b>	<a href="#">Public Sector Internal Audit Standards (PSAIS)</a> <a href="#">The Accounts and Audit Regulations 2015</a>

# **Internal Audit Update Report April 2021– February 2022**

(2021/2022 Internal Audit Plan)

## 1. Introduction

- 1.1. In accordance with the Public Sector Internal Audit Standards, the Internal Audit Update Report April 2021- February 2022 contains “emerging issues in respect of the whole range of areas to be covered in the annual report.”
- 1.2. Internal Audit is required to form an annual opinion on the overall adequacy and effectiveness of the organisation’s control environment, which includes consideration of any significant risk or governance issues, and control failures which have been identified.

## 2. Summary of Audit Work to Date

- 2.1. During this period, audit work was undertaken on the whole of the control environment comprising risk management, key control and governance processes. This work comprised a mix of risk based auditing, regularity, investigations and the provision of advice to officers. Annex 1 explains the variety of audit work undertaken to support the annual audit opinion.

### Assurance Work

- 2.2. A summary of the final reports issued to the end of February 2022, by the audit assurance opinion given is included in **Table 1**. Reports issued to this point are in line with expectations and approaching pre-covid levels of output.
- 2.3. Details of work in progress, covering draft reports issued for agreement with managers, fieldwork in progress and terms of reference stages, is covered in Table 5. It is anticipated that sufficient work in terms of quantity and coverage will be undertaken to deliver the annual opinion for 2021/22, with the number of final reports issued expected to be approaching the total number issued in 2019/20.
- 2.4. Figures relating to 2019/20 have been included in the table below to assist with comparison; no assurance work had been completed in the first half of 2020/21 as a result of the Covid-19 response.

**Table 1: Reports to date by assurance level**

Assurance Level	2021/22 (to 28/02/2022)	2020/21 Full Year	2019/20 Full Year
Good	2	6	6
Satisfactory	3	4	4
Limited	4	3	11
No Assurance	0	0	2
<b>Total</b>	<b>9</b>	<b>13</b>	<b>23</b>

**Table 2: Summary of Final Assurance Reports 2021/22 to 28 February 2022**

<b>Audit Report</b>	<b>Reason for Review</b>	<b>Audit Assurance Opinion</b>	<b>Management Response</b>	<b>Summary of Findings – (Limited /No Assurance Reports Only)</b>
Council Tax Billing Reconciliation 2022/23	Identified via Planning Process	Good	No actions raised	
NDR Billing Reconciliation 2022/23	Identified via Planning Process	Good	No actions raised	
Deprivation of Liberty Safeguards	Identified via Audit Plan	Satisfactory	All actions agreed	
B4B Go Live 2 Sign Off (joint work with CWAC and issued using their assurance levels)	Identified via Audit Plan	Reasonable* (CWaC IA opinion)	The audit report provided assurance to Programme Board in relation to the Go Live decision	
B4B Go Live 2 Sign Off – Cutover decision	Identified via Audit Plan	No formal assurance opinion provided	Issues raised in the audit report were included within caveats to be attached to the decision to enter cutover prior to the formal Go Live decision	Progress against the issues raised in this report were monitored and reported upon in the Go Live report detailed above.
C&WLEP Local Assurance Framework (assurance to s151 Officer)	Identified via Planning Process	Satisfactory	Final	Assurance to Director of Finance & Customer Services (s151 Officer) and C&WLEP management that the framework and procedures are robust and in accordance with national guidance.
Schools Consolidated Report 2020/21	Identified via Audit Plan	Limited	All actions agreed	The report summarises common issues arising from our school audit programme. Areas

Audit Report	Reason for Review	Audit Assurance Opinion	Management Response	Summary of Findings – (Limited /No Assurance Reports Only)
				<p>which require improvement included:</p> <ul style="list-style-type: none"> <li>• Contract management arrangements including Governing Body review of options when contracts end.</li> <li>• Review of procurement thresholds to ensure that they are appropriate to the size of the school.</li> <li>• Review and approval of purchase card transactions.</li> </ul>
Occupational Therapy	Identified via Audit Plan	Limited	All actions agreed	<p>The review sought assurance that appropriate arrangements were in place to meet both legislative and service requirements across the two locality teams delivering the service. It identified several inconsistencies in practice across the two localities including the use of liquid logic and the lack of a dedicated OT lead to undertake clinical supervisions.</p>
Purchase Cards	Identified via Audit Plan	Limited	All actions agreed	<p>The review sought assurance around compliance with the agreed purchase card scheme. It identified an unacceptable level of non-compliance but also recognised that the recent launch of updated and comprehensive guidance, workshops</p>

Audit Report	Reason for Review	Audit Assurance Opinion	Management Response	Summary of Findings – (Limited /No Assurance Reports Only)
				and compliance reporting will help to address the identified issues.

- 2.5. The assurance levels reported include a combination of opinions at a broad level for the Council as a whole (macro-level opinion) and opinions on individual business processes or activities within a single organisation, department or location (micro-level opinion).
- 2.6. Where control weaknesses are identified, recommended actions are agreed with management to ensure that the control environment is improved to an acceptable level. Through the follow up process, Internal Audit continues to obtain assurance that actions have been implemented, especially those deemed high priority.
- 2.7. It should be noted that Internal Audit's risk-based approach includes focussing on areas where issues are known or expected to exist. Clearly this approach adds value to the organisation, but, by its nature, may also result in lower overall assurance levels.
- 2.8. Where a final report is issued with a "Limited" or "No Assurance" opinion, improvement recommendations will be made. When implemented these will address the identified weaknesses and improve the control environment.
- 2.9. All actions from these audits have been agreed with management and progress on implementation will be monitored through the follow up process. Draft reports are agreed with the appropriate managers, and Final reports are shared with the relevant Executive Director.
- 2.10. The issues arising from the reports and the implementation of associated recommendations will be considered as part of the Annual Governance Statement process.
- 2.11. The Audit Plan is subject to regular review to reflect the current resources available to the team. As previously reported, a temporary Principal Auditor and a temporary Auditor were recruited during 2021/22 to provide additional resource to the team. With recruitment to these vacancies, and the return from maternity leave of another member of the team, it is expected that the team will complete sufficient direct assurance work supported by assurances gained through other areas of internal audit work to deliver the Annual Internal Audit Opinion for 2021/22.

## Schools

- 2.12. The Department for Education requires the Council's Section 151 Officer to sign off an Annual Assurance Statement. That statement confirms:
- the number of School's Financial Value Standard (SFVS) self-assessment returns received; and
  - that an appropriate audit programme is in place to provide adequate assurance over the standard of financial management, and the regularity and propriety of spending in schools.
- 2.13. The School's Audit Programme for 2021/22 has been agreed by both the Director of Finance and Customer Services (Section 151 Officer) and the Director of Education & 14-19 Skills.
- 2.14. In recent years, thematic reviews have been undertaken at schools targeting specific areas of the SFVS. For the current year, it has been agreed that Internal Audit will undertake a review of the completed SFVS returns at a sample of schools, supported by testing to provide assurance as to the accuracy and validity of the school's self-assessment.
- 2.15. The work was planned to be completed during quarter 4 of the current year and into quarter 1 of 2022/23 to enable the review to consider the latest SFVS returns. This will also provide assurance to the Section 151 Officer and facilitate the signing of the Annual Assurance Statement in May 2022.
- 2.16. The audit work has been undertaken in two phases; an initial review of documentation to allow the auditor to assess the school against the SFVS, and a comparison against the self-assessments undertaken by the schools. At the end of February 2022, the initial phase was completed with phase 2 planned to take place during April/May 2022.
- 2.17. Individual reports are produced and issued to schools detailing any areas of weakness identified and any actions required to address these weaknesses and improve the control environment. School reports include an assurance opinion on the arrangements, in line with other audit reports.
- 2.18. Consolidated findings and recommended actions and improvements are shared with all maintained schools through the "Schools Bulletin" and the "Director's Report".
- 2.19. Findings from all areas inform a consolidated schools report which provides assurance to the Director of Finance and Customer Services (Section 151 Officer) and the Director of Education & 14-19 Skills.

### **Supporting Corporate Governance**

- 2.20. In accordance with Regulation 6 of the Accounts and Audit Regulations 2015 the Council is required, each financial year, to conduct a review of the effectiveness of the system of internal control and publish an Annual Governance Statement (AGS).



- 2.21. During the year, and as previously reported in the 2020/21 Internal Audit Annual Report, Internal Audit has coordinated, on behalf of Management, the production of the Council's AGS for 2020/21.
- 2.22. Audit and Governance Committee approved the Draft AGS 2020/21 at their September meeting, in line with statutory deadlines. The Final AGS 2020/21 was approved at the January 2021 meeting of Audit and Governance Committee.

### **Counter Fraud and Investigations**

- 2.23. Internal Audit has continued to keep abreast of the latest fraud threats particularly in relation Covid-19 related scams, and where appropriate coordinated awareness raising via the Council's social media streams.
- 2.24. Over the past year there has been an increase across the country in attempted mandate fraud and executive impersonation fraud.
- 2.25. Mandate fraud occurs when fraudsters submit bogus requests to change the bank details of suppliers so that genuine payments intended for suppliers are instead paid to the fraudsters account. Executive impersonation fraud occurs when employees, usually in finance or payments teams, receive email communication purporting to be from very senior officers such as the Chief Executive or Finance Director of the organisation. These emails usually request that an urgent payment is made and that the usual checks and controls can be applied retrospectively. They rely on the employee feeling pressured to follow the instructions of a senior manager and are a form of social engineering.
- 2.26. In response to these threats, and as previously reported, work was undertaken in conjunction with the Transactional Service Centre to ensure that appropriate controls are in place to identify and prevent these attempts. This was particularly important given the move to remote working and whilst it is pleasing to note that appropriate controls were in place, awareness raising has taken place to ensure that officers are alert to these potential scams.
- 2.27. Internal Audit has continued to coordinate the investigation of matches identified as part of the 2020/21 National Fraud Initiative (NFI) exercise and ensure that services update the NFI website with the results. Work continues to review the outstanding matches and to date no matters of concern have been identified.
- 2.28. As previously reported, options for the development of a dedicated Counter Fraud resource as part of a wider review of the structure of internal audit had been paused to prioritise other work during the Covid-19 response. It is planned to revisit this during 2022/23 and further updates will be provided to the Audit and Governance Committee in due course.

- 2.29. In November 2021, the Crown Prosecution Service took the decision to take no further action with regard to investigations into historical land transactions in Middlewich and Crewe. This concludes all police investigations into the matters referred by the Council, following Internal Audit work.
- 2.30. At the request of the Chief Executive, a review of land transactions will be undertaken in 2022/23 to ensure that lessons have been learned from these matters and that appropriate controls are now in place to mitigate the risk of similar issues arising in future.
- 2.31. As reported to the Committee in January 2021, the former external auditors, Grant Thornton, would be completing work in relation to the outstanding audit certificate under the Local Audit and Accountability Act 2014. This work commenced during 2021/22 and is being supported by Internal Audit and the Council as a whole. At this moment it is not possible to provide any timescale for completion of this work.

### **Consultancy and Advice**

- 2.32. During the year, Internal Audit has continued to support management with the provision of advice - at the specific request of management. The nature and scope of these engagements are generally aimed at improving governance, risk management and control and contribute to the overall audit opinion as well as building good relationships across the Council.
- 2.33. In the year so far, advice and guidance has been provided on:
- Suspected scams and attempted frauds.
  - Design and application of controls in new/proposed systems.
  - Interpretation of Finance and Contract Procedure Rules.
- 2.34. By providing this service, internal audit can ensure that processes are supported by appropriate controls to mitigate identified risks associated with the particular activity at the outset of change or development, providing far more valuable input to the service and wider control environment overall.

### **Grant certifications**

- 2.35. Internal Audit is often required to certify statutory returns and grant claims. This may be related to funding provisos or similar. In most cases the work required is either an audit or an assurance statement on a specific programme/project.
- 2.36. In 2021/22 to date, this has included work on the following grants, which were successfully signed off and submitted to the appropriate funding body:

**Table 3: Grants Certified during 2021/22 as at 28 February 2022**

<b>Grant Certified</b>	<b>Funding Body</b>	<b>Amount</b>
Family Focus (year to date)	MHCLG	£276,800
CWLEP Growth Hub Grant	BEIS	£287,000
CWLEP EU Transition Grant	BEIS	£136,050
CWLEP Supplementary Grant	BEIS	£175,000
CWLEP Peer Network Grant	BEIS	£165,000
Bus Service Operators Grant	DfT	£347,865
Local Transport Capital Block Funding	DfT	£12,147,000
Transport Infrastructure Investment Fund	DfT	£6,855,000
Traffic Signals Maintenance Funding	DfT	£500,000
Congleton Link Road	LGF	£7,709,543
Compliance and Enforcement (Covid)	MHCLG	£158,572
Restart Grant (Covid)	BEIS	£21,294,675
Cultural Recovery (Covid)	ACE	£180,000
Protect and Vaccinate (Covid)	DLHUC	£81,005
Elena EIB Energy Programme	EIB	EU1,471,321 (£1,261,145)
Disabled Facilities Grant Additional allocation	MHCLG	£2,064,279 £277,962
<b>Total</b>		<b>£53,916,896</b>

- 2.37. It should be noted that the level of work required to complete the sign off of grants is not always proportionate to the value of the grant; grant funding conditions are set by the funding body, and it is this which determines the amount of testing and validation required to inform the sign off.
- 2.38. In addition to the grants detailed above, work has also been undertaken in relation to other Covid-19 related grants. This includes those received during the year and also in relation to the reporting requirements of those received during 2020/21.
- 2.39. Internal Audit has coordinated a grant register that details the nature of each grant and any reporting and sign off details. Lead officers have been identified for each of the grants and work undertaken to ensure that all

returns have been completed within deadlines. Work is continuing in this area to ensure that the Council is aware of all requirements and deadlines associated with the many grants that it receives and administers.

### **Work for Other Bodies**

- 2.40. Since 2013, Cheshire East Council has been the host authority for the PATROL (Parking and Traffic Regulations Outside London) Adjudication Joint Committee and Bus Lane Adjudication Joint Committee, and as part of this, we provide an Internal Audit service.
- 2.41. This service was provided remotely during 2020/21. The outcome of the internal audit work is reported to the PATROL Committees directly and does not inform the annual internal audit opinion for Cheshire East Council.
- 2.42. The work was completed, and a report issued during June 2021.

### **Implementation of Audit Recommendations**

- 2.43. Internal Audit continually carries out a range of follow up exercises to ensure recommendations are implemented. This work is done in a number of different ways:
- Major pieces of audit work, such as the AGS have detailed action plans which are monitored and reported separately to the Committee.
  - Investigations – follow up work is usually dependent on both the nature of the investigation and any recommendations made e.g. a follow up audit may be done at the request of management.
  - Formal assurance audits; recommendations are monitored in line with our follow up process.
- 2.44. Audits with 'limited' or 'no' assurance are subject to more detailed review. In addition, key systems (e.g. Payroll, Accounts Payable) are audited on a regular, cyclical basis with recommendations followed up as part of the work.
- 2.45. The Committee have previously been advised of the work undertaken by Internal Audit, supported by senior management to raise the profile of audit recommendations. This has included the agreement of "SMART" recommendations and the inclusion of performance measures in the Corporate Scorecard. There was a "pause" in the follow up of actions, created by the move away from traditional internal audit work to support the organisation's response to Covid, but as our assurance work builds back up, we will ensure that managers have regular updates on the position of recommended actions. During 2022/23 we will seek to further raise the profile of audit actions through development of regular reports to CLT and DMT's.

- 2.46. The implementation of agreed recommendations for reports issued in 2019/20, 2020/21 and the current year to date is detailed in the table below.

**Table 4: Implementation of agreed recommendations as at 30 September 2021**

On time	After the agreed date	Total implemented	In progress, or overdue	Agreed actions subsequently not implemented
2019/20				
75%	25%	100%	0%	0%
2020/21				
100%	0%	100%	0%	0%
2021/22				
100%	0%	100%	0%	0%

- 2.47. These high implementation figures over several years have been achieved as a result of significant effort by the Internal Audit team in carrying out follow ups with managers along with support from senior managers in raising the profile of audit actions.
- 2.48. In agreeing implementation dates, managers are encouraged to be realistic with regards to when actions can be completed whilst ensuring that issues are addressed in a timely manner. It is pleasing to report that senior management have continued to support Internal Audit by challenging their service managers around implementation of actions.
- 2.49. The timely implementation of audit recommendations is a good indicator of both the effectiveness of Internal Audit in securing action and the Council's commitment and capacity to improve.

### Ongoing Work

- 2.50. The following audits commenced during the period, with work ongoing at the time of reporting:

**Table 5: Ongoing Internal Audit Assignments as of 28 February 2022**

Audit	Scope of Review	Status
People Helping People	To review the governance structure in place to manage the People Helping People scheme introduced in response to the covid-19 pandemic.	Draft report issued
Community Infrastructure Levy	To review the processes and controls around the requests, collection, management, implementation and expenditure of	Draft report being reviewed

	S106 and CIL schemes. It is likely that separate reports will be issued.	
Journey First	To review the systems, processes and controls in place to ensure that the funding received has been utilised and delivered in line with the original grant application and conditions of award.	Draft report being reviewed
Declaration of Interests - Members	To review the processes and controls in place to manage declarations of interest from Members.	Draft report being reviewed
Declarations of Interest - Officers	To review the processes and controls in place to manage declarations of interest from officers.	Draft report being prepared
Gifts and Hospitality – Members	To review the processes and controls in place to manage the Members register of gifts and hospitality	Draft report being produced
Gifts and Hospitality – Officers	To review the processes and controls in place to manage the officers register of gifts and hospitality	Draft report being produced
ERP Replacement – post implementation reviews	Work is underway on 2 reviews to seek assurance that key system controls are in place and operating effectively	Fieldwork underway and will continue into 2022/23
Fraud Controls – impact of remote working	To assess the impact of remote working on established fraud controls in Council Tax, NDR and Benefits	Fieldwork underway
ANSA – review of gritting arrangements	To seek assurance around the arrangements to manage gritting services	Draft report being produced.

**Table 6: Planned work carried forward into 2022/23**

<b>Audit</b>	<b>Scope of Review</b>
Fostering	The focus of the review will be discussed with the Head of Service to identify the key risks and ensure that it adds maximum value.
Expenses	To understand the impact of remote working and the subsequent return to the office on the processes and controls in place for the payment of expenses to both officers and members.
High Needs Funding	Review of the processes and controls in place to manage the high needs block of the dedicated schools grant.
Contract Awards	To review the impact of the response to the covid-19 pandemic on the controls in place to manage the award of contracts.
Management of Commissioned Services (Adults and Children's Social Care)	The focus of the review will be discussed with the Head of Service to identify the key risks and ensure that it adds maximum value.
ERP Replacement – post implementation reviews	Although some work has already commenced, additional assurance will be sought throughout 2022/23.
Section 106	The initial plan was for a joint review of the Section 106 processes alongside CIL but upon commencing work it was agreed that it was appropriate for separate reviews to take place. This element has therefore been carried forward.

- 2.51. It is also possible that other, unplanned reviews may be undertaken at the request of management.

### **3. Internal Audit Performance**

- 3.1. Internal Audit's performance is measured against a number of performance indicators which are detailed in Table 7.
- 3.2. The performance relating to the implementation of recommendations is detailed earlier in this report.

**Table 7: Performance Indicators to date**

<b>Performance Indicator</b>	<b>2021/22 Actual</b>	<b>2021/22 Target</b>	<b>2020/21 Actual</b>	<b>Comments on 2021/22 Actuals</b>
% of Audits completed to user's satisfaction	95%	92%	100%	Above target
% of significant recommendations agreed	100%	90%	100%	Above target
Chargeable Time (Assurance Work)	78%	80%	84%	In line with target
Draft report produced promptly (per Client Satisfaction Form)	90%	95%	100%	Above target

#### **4. Compliance with the Public Sector Internal Audit Standards**

- 4.1. Regulation 6 of the Accounts and Audit Regulations 2015 requires relevant bodies to conduct an annual review of the effectiveness of its internal audit and for a committee of the body to consider the findings.
- 4.2. This review is carried out by self-assessing compliance with the Public Sector Internal Audit Standards (PSIAS) which were updated with effect from 1 April 2017. The PSIAS require Internal Audit to have in place a quality assurance and improvement programme which must include both internal and external assessments.
- 4.3. The outcome of the review will be reported in the Annual Internal Audit Report 2021/22.





Working for a brighter future together

## **Audit and Governance Committee**

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<b>Date of Meeting:</b>	26 May 2022
<b>Report Title:</b>	Revised Councillors Code of Conduct
<b>Report of:</b>	David Brown Monitoring Officer & Director of Governance and Compliance
<b>Report Reference No:</b>	AG/14/21-22
<b>Ward(s) Affected:</b>	ALL

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### **1. Purpose of Report**

- 1.1. The introduction to the paper 'Local Government Ethical Standards' A Review by the Committee on Standards in Public Life' published January 2019 (The Ethics Report) begins with '*The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally. All public office-holders are both servants of the public and stewards of public resources.*' These Principles must be embodied within the Code of Conduct adopted by each local authority.
- 1.2. The purpose of this report is to agree a revised Code of Conduct which reflects the Local Government Association model Code of Conduct for elected members, and incorporates best practice recommendations from The Ethics Report which can be recommended to full Council for adoption.
- 1.3. A revised procedure for investigation of complaints is also attached for agreement and subsequent recommendation to full Council for adoption.

### **2. Executive Summary**

- 2.1 The Member Code of Conduct Working Group has, in conjunction with the Monitoring Officer, produced a new Councillor Code of Conduct for consideration by the Committee. This report requests Committee endorsement for the draft Code to be referred to full Council for adoption,

subject to any amendments the Committee may wish to make. The report identifies areas where any significant deviation from the model code of conduct has been recommended by the members of the working group.

- 2.2 The Code is designed as a behaviour-based code which looks at how a Councillor has behaved, and measures a Councillor's behaviour against the Standards in Public life principles that statute requires all councils to include in their codes of conduct. A behaviour code is not a prescriptive 'list' of behaviours to be worked around, or for culpability to be avoided by technical disputes. It provides Councillors with a mechanism for setting out the behaviours they expect from their peers and to be responsible for ensuring and maintaining that standard.
- 2.3 This report (at sections 6 and 7) identifies where best practice recommended by the Ethics Report has not been adopted. Councillors must be clear that this sets the standards, behaviours and expectations of the Councillors of Cheshire East Council as well as the Town and Parish Councils who adopt the Code. All councils at all tiers must adopt a Code, and it is both recommended and commonplace for parish and town councils to adopt the Code of the upper tier authority in the area.
- 2.4 For example the Ethics Report has Best Practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors. However, the working group concluded that if you could not legally compel cooperation, there should be no expectation in the Code of Conduct that a member will behave cooperatively and are advising it be deleted from the proposed Cheshire East Code of Conduct.
- 2.6 Further, a detailed procedure has been developed to accompany the new Code, setting out how to make a complaint about Councillor conduct and how those complaints will be dealt with. The Committee is asked to approve the document, subject to any amendments the Committee may wish to make. The process is required by Section 28(6) of the Localism Act 2011.
- 2.7 It is a legal requirement for any new Councillor Code of Conduct to be formally adopted by full Council. In light of this, it was considered essential that political group leaders were consulted on the Working Group's proposals, given the final adopted code and procedure would ultimately apply to all councillors. Group leaders were provided copies of the draft documents and briefed on the key points raised within this report. The discussion included consideration of the key disparities between the Model Code and that proposed for adoption. The recommendations of the Group Leaders on each of these matters is included within the Comparator Table at **Appendix C**.

### **3. Recommendations**

#### **3.1. That the Committee –**

- a) Endorse the draft Councillor Code of Conduct appended to this report (subject to any amendments the Committee may wish to make), for adoption by full Council; and
- b) Approve the draft Code of Conduct Complaints Procedure appended to this report (subject to any amendments the Committee may wish to make), to take effect following adoption of the Code of Conduct by full Council.

### **4. Reasons for Recommendations**

- 4.1. The Audit and Governance Committee has a key role in overseeing the Council's arrangements for ethical governance. This role includes the Council's standards arrangements, and in particular a duty to develop, maintain and update Codes of Conduct and associated protocols.
- 4.2. Although Members are tasked with holding each other to account, the independence, impartiality and necessary distance from political influence is maintained by the statutory role and responsibilities of the Monitoring Officer. In this instance, the Monitoring Officer is tasked with applying the procedure adopted by the Council that deals with the handling of Member complaints. The Monitoring Officer will also try to ensure there is a balance between the legitimate desire of members to influence the code and process at a local level, and the obligation to maintain a process free from undue influence.
- 4.3. The Council's current Councillor Code of Conduct ('the Code') has been in place since 2018, as has the accompanying procedure for dealing with allegations of breach ('the Procedure'). It is considered good practice to review the Code and Procedure periodically, to ensure it remains fit for purpose and relevant to the circumstances of the Council and those councils within the Cheshire East border. The trigger for the review is the publication of the Local Government Association model Code of Conduct for elected members, which incorporates best practice recommendations from The Ethics Report.
- 4.4. The Councillor Code of Conduct
- 4.5. The Local Government Association ('LGA') has produced a model code of conduct for councillors, which provides a robust base upon which a revised Code can be developed. This model code has been developed nationally on the basis of a significant level of legal expertise and national stakeholder

consultation, and represents the predominant view across all local authorities in England as put forward by the Local Government Association. The task of reviewing the LGA model code to establish its suitability for Cheshire East has been undertaken by the Code of Conduct Working Group in conjunction with the Monitoring Officer. The Working Group has evaluated the LGA code, and considers it should be adopted, subject to amendments set out below.

- 4.6. Cheshire East Council also has responsibility for dealing with councillor conduct issues arising in parish and town councils across the whole Borough. Currently all these councils have adopted the Cheshire East Code, so it is hoped the revised Code will also be adopted so any changes will cascade borough wide. The draft Code has been circulated to these councils, and their feedback sought. Feedback was invited in writing and during virtual meetings set up via Cheshire Association of Local Councils (ChALC) for this purpose.
- 4.7. A summary of key feedback received from parish and town councils is outlined below:
- a) The majority of respondent councils indicated they were happy with the draft Code and intended to adopt it in due course.
  - b) There was some confusion surrounding the issue of whether an individual was acting in their personal or official capacity in certain circumstances, therefore uncertainty as to when the provisions of the Code applied. This could be a particular issue on social media.
  - c) The Code should not prevent Councillors from being involved with and commenting on issues of local concern, provided appropriate precautions were taken.
  - d) One respondent considered the Code would benefit from greater clarity on the issue of protecting Councillors from intimidation, abuse and bullying when carrying out their duties.
  - e) Several respondents expressed a desire for the Member/Officer Protocol, and Officer Code of Conduct, to be reviewed and harmonised with the proposed Councillor Code wherever possible and appropriate.
  - f) There was a divergence of views as to whether gifts and hospitality should be accepted, and if so, what an appropriate value might be.
  - g) Frustration was expressed at the lack of sanctions available within current legislation to deal with breaches of the Code.
  - h) An explanation of predetermination should be included for completeness.
  - i) Formatting and presentation issues were identified by one respondent, whose suggestions included improved section titles, clause numbering and version control, ensuring hyperlinks were operative, documents related to the Code being available for reference in order to form a complete picture, ensuring consistency of terminology, and further

consideration to be given to phraseology including whether the Code should compel or recommend particular behaviour.

- j) Some respondents expressed a wish for training to support the proposed new Code, perhaps delivered in conjunction with ChALC.

4.8. All feedback received has been collated and presented to the Working Group for consideration. The draft Code and Procedure have been finalised with the feedback in mind, and in the interests of achieving a balance that is workable, widely applicable, and within our statutory confines. The draft Code is appended to this report for consideration by the Committee **(Appendix A)**. The Committee is asked to adopt the draft Code, subject to any amendments the Committee may wish to make.

4.9. Code of Conduct Procedure

4.10. As well as adopting a Code, the Council is obliged to also adopt suitable procedures for dealing with allegations of breaches of that Code. The current procedure has been in operation for approximately 3 years, and it details the various stages a complaint passes through en route to determination.

4.11. The practical application of the existing Procedure has however highlighted areas it could be made more efficient and less bureaucratic. It has been a number of years since a complaint has been subject to a Sub-Committee hearing under the adopted Procedure, and recent experience with this part of the process has also assisted in identifying potential improvements.

4.12. The Code of Conduct Working Group in conjunction with the Monitoring Officer, have devised the draft Procedure appended to this report. The draft seeks to retain the parts of the existing process that work well, and incorporate a number of improvements, most notably:

- a) Further clarification on the applicability of the Code and the types of allegations that are likely to be taken forward, including a clearer process for sifting complaints out that do not fall within the confines of the Code;
- b) How multiple complaints about the same issue will be dealt with;
- c) Refining the process for anonymous complaints;
- d) A less cumbersome process for consultation with the Independent Person, in particular allowing the method of consultation to suit the circumstances;
- e) Streamlining the process associated with Sub-Committee hearings;
- f) Adding greater transparency through the routine publication of decision notices [on completion of assessment or determination of a complaint].

- 4.13. The draft Procedure is appended to this report for consideration by the Committee (**Appendix B**). The Committee is asked to adopt the draft Procedure, subject to any amendments the Committee may wish to make. It is suggested that the adopted Procedure should take effect once full Council has adopted the revised Code. Should full Council seek to amend the Code prior to adoption, the Procedure is likely to remain relevant and applicable as its focus is the processing of complaints under the Code, whatever that Code may include.

## 5. Other Options Considered

Option	Impact	Risk
<b>Do nothing</b>	The Code will remain in the pre Committee report format and will not cover all the best practice recommendations	The Code will not capture all aspects of Councillor behaviour in a way that supports public confidence
<b>Adoption of the Model Code with minor adaptations that are area specific</b>	This will provide regional and national consistency, allow for efficiency in external investigations and would support adoption by all town and parish councils. This approach was recommended by officers.	The Model Code reflects national debate and national understanding of the wording limitations and prescriptions. It would give legal consistency and robustness to challenge.
<b>Adoption of the Model Code with major adaptations to reflect specific areas of concern</b>	This is recommended by the Audit and Governance working group. Key areas will deviate from the national standard and may give rise to issue of interpretation and understanding	Significant deviations from an accepted and well understood norm adds risk through the necessity to interpret language, and cause additional increases in time and cost.

## 6. Outline of notable changes – Code of Conduct

- 6.1. The areas of major deviation from the model Code of Conduct together with a summary of the working group's reasons are provided below.
- 6.2 **Disrepute Section 5.** The model code of conduct wording requires Councillors not to bring the Council into disrepute. The Ethics Report (page 42) cites Plymouth City Council Code as an exemplar. This wording does not limit any political discourse or ability to hold the council to account. As this is a



councillor Code of Conduct the wording relates solely to the behaviour of the Councillor. The working group indicated some concern that this may limit political debate and considered that the explanatory wording contained within the draft did not sufficiently address these concerns.

The working group are recommending this is limited to 'I do not bring my role of Councillor into disrepute'. This limitation means that the draft Code does not include guidance to specifically address behaviour that may bring the Council itself into disrepute.

- 6.3 **Complying with the Code section 8.** Best Practice recommendation 2 from the Ethics Report was the requirement to cooperate with any Code of Conduct investigation. The detailed reasons for this recommendation can be found in the ethics report at page 41. The Working Group has asked that this is deleted from the Cheshire East Councillor Code of Conduct on the basis that if a councillor cannot be legally compelled to cooperate, a Councillor should not be expected to cooperate.

- 6.4 **Gifts and Hospitality Section 10.** The model code provided for a balance between reporting, transparency and unnecessary burdens (Ethics Report page 47.) Recommendation 6: Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source.

Significant debate including parish council contributions took place on this issue. The working group concluded that the requirement for maintaining a running total from a single source was not practicable. The working group considered that the Councillor code and the Officer code should be the same, as the obligation on each for transparency and public confidence are identical.

The revised wording will require Councillors to record any gift or hospitality received that is more than nominal. Nominal being small item pens, key rings etc handed out at conferences or nominal gifts of confectionary. All other gifts and hospitality will require registering and in due course publishing. The best practice recommendation is to publish the register each quarter (Ethics Report page 48).

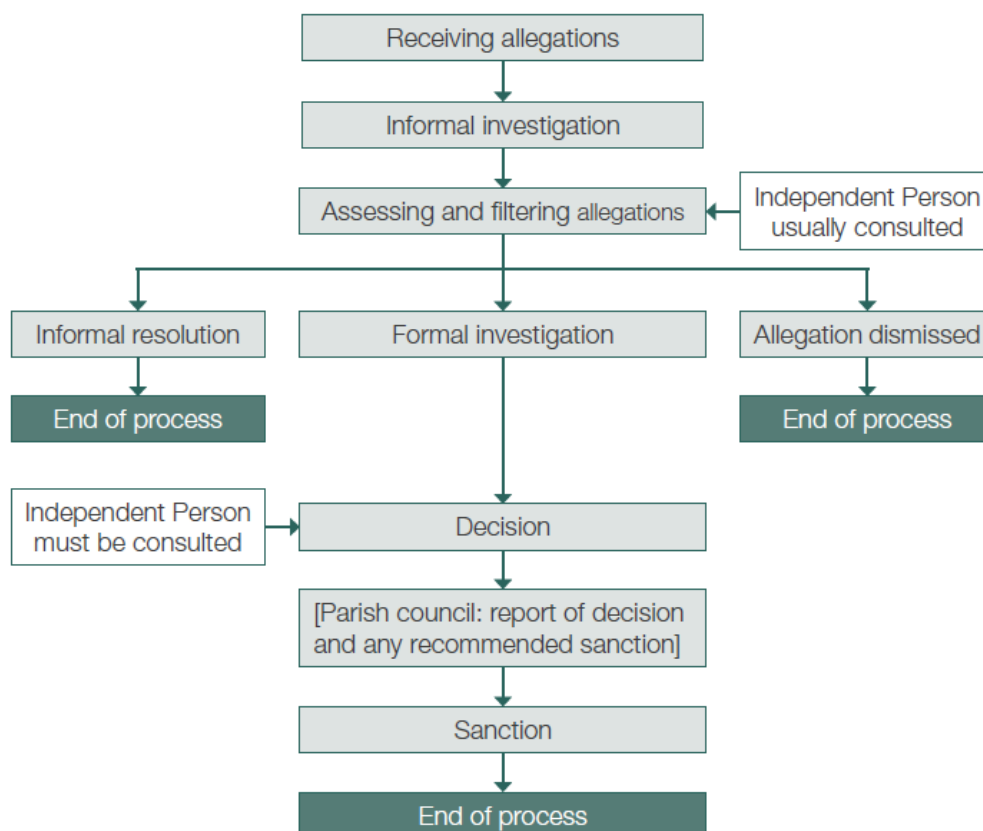
- 6.5 Further changes to the gifts and hospitality provisions have been made to assist Councillors who may receive a gift or hospitality in ceremonial or official duties. The working group felt additional clarity with examples would help the public understand how gifts may be treated and allow holders of ceremonial office a transparent record.
- 6.6 **Predetermination and predisposition and bias.** This does not appear in the model code. Parish Council members requested clarity on this issue and although many other publications deal with the definitions around this (for example the planning specific guidance: (<https://www.local.gov.uk/sites/default/files/documents/probity-planning-councill-d92.pdf>), and the separate planning code at Chapter 4 part 4 of the

Cheshire East Constitution, the working group considered it may be of benefit to reference the issue in the main Code. It is important to note that again this is not designed to limit political debate, discourse, or development of manifesto etc but as an aide memoir when considering what are usually regulatory functions of the council.

- 6.7 **Appeals.** The working group gave considerable voice to an appeal process. There is no statutory right of appeal as this was removed by the Localism Act. A balanced narrative is set out at page 61 of the Ethics Report. The report at page 62 also sets out a proposed process *if* the legislation is changed to enable this. It does not recommend an appeals procedure until the legislation has been updated to provide for such an appeal, and sanctions are increased to a proportionate level where an appeal has potential justification e.g. on suspension of a councillor from office. Councils that currently have a review process appear to do so by having another subcommittee which is tasked with effectively ‘rehearing’ a matter.

## 7. Outline of notable changes – Process.

- 7.1 Although there is no requirement for a hearing subcommittee and decisions may rest with the Monitoring Officer, Cheshire East with many other Councils has sought to engage Councillors fully in the adjudication process on standards issues. The ethical report at page 52 sets out a useful summary of the process.





- 7.2 At the decision stage after a formal investigation Cheshire East has chosen to make decisions via a sub-committee. A sub-committee is not a tribunal but a committee of the Council. The committee receives information via a report, in the same way as any other decision-making committee. The committee may ask technical questions on the report (usually addressed to the investigating officer) then questions on any evidence presented by the subject member and to debate and reach a conclusion with the assistance of an independent person.
- 7.3 The formal report considered by the sub-committee will include a record of the observations of any witness and the subject councillor (assuming they have chosen to cooperate). The requirement for any 'live' witness is therefore not mandatory and given the cost and time involved should only be considered in the most exceptional circumstances. The officer recommendation is that no witnesses should be involved in the sub-committee hearing itself, and that all witness evidence should be dealt with at the investigation stage of the process. Subject only to an exceptional circumstance provision. This officer recommendation was rejected by the working group, on the basis that this may prejudice the subject member's presentation of their case, and that the ability to call witnesses and the number of witnesses called should be at the discretion of the sub-committee.
- 7.4 The working group are recommending the removal of the Monitoring Officer's discretion and that no changes are made to the adopted process without the consent of the Audit and Governance Committee. The new process will be fixed and require clear compliance if any matter is to proceed to subcommittee. The working group considered that the process should have the oversight of the Committee, with any changes to it to be considered by Members.
- 7.5 It should be noted that primary legislation sets out the role and remit of the statutory Monitoring Officer, which is reflected in the Council's Constitution as a duty to support and advise the Council on matters relating to the conduct of Councillors. The traditional separation of powers and responsibility helps maintains the objectivity of the Code and associated process, and removes the possible perception of conflict of interest that may arise with political imperatives.
- 7.6 Although transparency is a core policy consideration historically complaints have been made of Cheshire East 'secrecy' of the Code of Conduct. The working group at para 5.13 felt it important not to allow the Monitoring Officer to inform the Group Leader or Whip of relevant member complaint matters. The working group considered that it was not best practice for the Group Leader or Administrator/ Whip to be routinely informed of conduct matters, and that it would in any event not be useful particularly if complaints had not been upheld. Best practice recommendation 15 however provides that 'senior officers should meet regularly with political group leaders or group whips to discuss standards issues. It should also be noted that at para 5.27 of the

process a clear indication is given that in the case of a formal investigation, the process will normally expect disclosure of the terms of reference of any investigation. Albeit these may be redacted to protect the complainant's identity.

- 7.7 Para 5.30 of the procedure stipulates that any investigation undertaken must be proportionate in resources and cost to the complaint made. However, this does not permit any equivalent part of the process to flex. In practical terms this allows the Monitoring Officer, having considered all the circumstances, to direct a complaint to the most appropriate investigator. A relatively straight forward fact-finding investigation could be conducted by an appropriate council officer but would need to follow the exact same process, as a complex high-profile investigation that could be referred to an external investigator.

## **8. Consultation and Engagement**

- 8.1 The original draft Code has been circulated to all parish and town councils within the Cheshire East area, and their feedback sought. Feedback was invited in writing and during virtual meetings set up for this purpose, and a summary appears at para 4.6 above. This is in addition to any input councils and individuals may have provided in response to the Model Code upon which this draft is based, and which was widely consulted upon. This version will be shared following any recommendations amendments by the Audit and Governance Committee.
- 8.2 Cheshire East Group Leaders have been briefed in relation to the final draft of the Code. The discussion included consideration of the key disparities between the Model Code and that proposed for adoption. The recommendations of the Group Leaders on each of these matters is included within the Comparator Table at **Appendix C**.

## **9. Implications**

### **9.1. Legal**

- 9.1.1. The Council is obliged to adopt a Code and suitable procedure for dealing with alleged breaches of that Code. Adoption of the Code falls to full Council as a Constitutional amendment, whereas the Procedure falls within the remit of the Committee. Section 27(2) of the Localism Act 2011 requires the adoption of a suitable Code, the content of which must be consistent with the principles set out at section 28 of the Act. The accompanying procedure is a requirement of section 28(6) of the Act.
- 9.1.2. The statutory role of the Monitoring Officer includes the promotion of high standards of conduct amongst elected Members, a fundamental part of which is ensuring a suitable Code of Conduct is in place, and alleged breaches of that Code are dealt with in accordance with the associated process.

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

9.3. **Finance**

9.3.1. Although there are no direct financial implications arising from this report, the Localism Act 2011 requires sufficient resources to be made available. The Code of Conduct does not in itself create cost to the Council, costs arise directly from the investigation of poor behaviour by Councillors.

9.3.2. The process adopted by the council has a direct impact on costs. The more complex and inflexible the process the greater the cost and the greater the ability for recalcitrant subject members to extend the time and cost envelope

9.4. **Policy**

9.4.1. The initial policy considerations were to ensure that all relevant best practice had been incorporated into the revised Code of Conduct and the code should reflect the model code provided by the LGA. The working group of Cheshire East Council at the commencement did not wish to consider a sub- regional approach.

9.5. **Equality**

9.5.1. The proposed Code and Procedure are based on recognised good practice which aims to ensure equality of treatment and a fair process for all who are involved.

9.6. **Human Resources**

9.7. There are no human resources issues arising directly from this report.

9.8. **Risk Management**

9.9. The procedure adopted should seek to minimise financial and reputational risk to the Council through the promotion of clear, proportionate and robust measures to efficiently and effectively deal with complaints.

9.10. **Rural Communities**

9.11. There are no issues arising directly from this report that may impact rural communities.

9.12. **Children and Young People/Cared for Children**

9.13. There are no issues arising directly from this report that may impact children and young people.

9.14. **Public Health**

9.15. There are no public health issues arising directly from this report.

9.16. **Climate Change**

There are no climate change issues arising directly from this report.

<b>Access to Information</b>	
Contact Officer:	Jamie Hollis, Head of Legal Services <a href="mailto:jamie.hollis@cheshireeast.gov.uk">jamie.hollis@cheshireeast.gov.uk</a>
Appendices:	Appendix A: Draft Councillors Code of Conduct Appendix B: Draft Procedure Appendix C: Comparator table
Background Papers:	'Local Government Ethical Standards' A Review by the Committee on Standards in Public Life' published January 2019; Local Government Association model Code of Conduct for elected members

Highlights to link to supporting docs

## Cheshire East Council – Code of Conduct

Cheshire East Council has adopted this Code of Conduct to promote and maintain high standards of conduct and underpin public confidence in the Authority and its Councillors and co-opted Members (referred to collectively in this Code as “Councillors”).

1. All Town and Parish Councils that are within the Borough boundary have been invited to adopt this Code. It is acknowledged that town and parish councils that choose to adopt this Code may wish to amend its provisions to reflect local circumstances and preferences.
2. It is important that as Councillors we can be held accountable, and all adopt the behaviours and responsibilities associated with the role. Conduct as an individual Councillor affects the reputation of all Councillors. The Council wants the role of Councillor to be one that people aspire to. The Council also wants individuals from a range of backgrounds and circumstances to be putting themselves forward to become Councillors.
3. As Councillors, we represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent our local area, taking decisions fairly, openly, and transparently. We have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.
4. Importantly, we should be able to undertake our role as a Councillor without being intimidated, abused, bullied, or threatened by anyone, including the general public.
5. This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public’s trust in local government.

## Introduction

This Councillor Code of Conduct has been adopted under the Localism Act 2011 and is supported by a **process** that will be followed if a complaint is made. A complaint should be made to the Monitoring Officer with sufficient information to substantiate it. The form may be found **here**.

Support for Town and Parish Councils may be accessed through their membership of the Cheshire Association of Local Councils (ChALC) or the National Association of Local Councils (NALC).

## Definitions

For the purposes of this Code of Conduct, a “Councillor” means an elected Councillor or co-opted Member of Cheshire East Council or of one of the Town and Parish Councils that have adopted this Code of Conduct

A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who

- a) is a member of any committee or sub-committee of the authority, or;

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

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

For the purposes of this Code of Conduct, “local authority” includes Cheshire East Council and or one of the parish councils, town councils within the Borough.

## **Purpose of the Code of Conduct**

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

## **General principles of Councillor conduct**

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, Councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles. The Nolan Principles are:

1. Selflessness;
2. Integrity;
3. Objectivity;
4. Accountability;
5. Openness;
6. Honesty;
7. Leadership.

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

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

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

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest

- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

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

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

This Code of Conduct applies to you when you are acting in your capacity as a Councillor or Co-opted Member which may include if:

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

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

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

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

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

## **Standards of Councillor conduct**

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

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

## **General Conduct**

### **1. Respect**

As a Councillor:

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

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

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

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

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

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

As a Councillor:

2.1 I do not bully any person.

2.2 I do not harass any person.

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

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

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

Because bullying and harassment can be subjective by its very nature, any complaints of such behaviour will be subject to an objective assessment of all the circumstances surrounding the allegation.

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

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

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

As a Councillor:



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

Officers work for the local authority as a whole and must be politically neutral (there are no political assistants in Cheshire East). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, for having acted in a particular way, or in respect of the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

Councillors should always use the appropriate routes to raise issues and inform decision making.

## 4. Confidentiality and access to information

As a Councillor:

4.1 I do not disclose information given to me in confidence by anyone, or acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless:

- a) I have received the consent of a person authorised to give it;
- b) I am required by law to do so;
- c) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
- d) the disclosure is:
  - i. reasonable and in the public interest; and
  - ii. made in good faith and in compliance with the reasonable requirements of the access to information procedure rules; and
  - iii. I have sought the views of the Monitoring Officer prior to its release.

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

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

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

## 5. Disrepute

As a Councillor:

5.1 I do not bring my role of Councillor into disrepute;

5.2 I am seen as a representative of Cheshire East Council or my Town or Parish Council and seek to uphold the image and reputation of the Council and will not bring my Council into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be

aware that your actions might have an adverse impact on you, other Councillors and/or your Council and may lower the public's confidence in you or your Council's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow Councillors to account and are able to challenge, criticise and express concern about decisions, services and processes undertaken by the Council whilst continuing to adhere to other aspects of this Code of Conduct. The Code of Conduct does not stifle political debate, or prevent Councillors from campaigning on issues of local concern.

## **6. Use of position**

As a Councillor:

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

Your position as a Councillor of the local authority provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others.

However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

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

As a Councillor:

7.1 I do not misuse council resources.

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

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

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

Examples include:

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

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

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

As a Councillor:

8.1 I undertake Code of Conduct training provided by my Council.

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

8.3 I acknowledge that while I am not compelled to engage with a Code of Conduct investigation, I will nevertheless comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

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

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

#### **9. Interests**

As a Councillor:

9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of Councillors of the Council this includes Town and Parishes.

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

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

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

#### **10. Gifts and hospitality**

As a Councillor:

10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.

10.2 I will only accept gifts and hospitality when on a scale appropriate to the circumstances, and where it is apparent that no cause could reasonably arise for adverse criticism about the acceptance of the gift or hospitality. Hospitality is usually acceptable when the invitation is corporate not personal.

Whatever gift/hospitality is provided to you, other than a gift or hospitality of nominal value only (such as drink or small items of stationery), you should report the circumstances and the type of hospitality to the Monitoring Officer. Small insignificant gifts of a value of less than £50, such as pens, diaries, calendars, mouse mats or mugs, may be accepted.

10.3 I will register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.

In order to protect your position and the reputation of your Council, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a Councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered.

Corporate gifts and/or hospitality may on occasion be offered to Councillors carrying out duties associated with a ceremonial role such as Mayor. If the gift or hospitality is offered in ceremonial capacity it can be accepted and noted on the register for the office being held. For example, the Mayor receives a gift on behalf of the Council the gift will be recorded in the Mayors register and retained by the Council. A gift received by the Mayor as a token of thanks for attending a function such as flowers will be recorded as a personal gift within the register as appropriate. Gifts of a greater value should only be accepted on the basis that the gift or hospitality is declared. Gifts or hospitality (if appropriate) accepted in a ceremonial capacity may be donated to charitable or other appropriate causes such as the Mayors Charity.

You do not need to register gifts and hospitality which are not related to your role as a Councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a Member. If you are unsure, do contact the Monitoring Officer for guidance.

## **11. Predetermination and predisposition**

Predisposition is when a councillor may have a pre-existing opinion or attitude about the matter under discussion, but remains open to listening to all the arguments and changing their mind in light of the information presented at the meeting. While care needs to be exercised, generally predisposition does not affect a Councillors ability to participate in decision making.

Predetermination however is when a Councillor's views on an issue are such that it could be said they have a closed mind to the matter being discussed. Participating in decision making if predetermined may undermine the decision taken.

Questions about predetermination and predisposition most commonly arise in the planning arena. Additional guidance is available on this specific scenario in the Probity in Planning Guide, which can be found at: <https://www.local.gov.uk/publications/probity-planning-advice-councillors-and-officers-making-planning-decisions>

## **12. Bias**

The law distinguishes actual bias from apparent bias.

The actual bias is subjective and deals with the Councillor's state of mind for example a decision made for the reason of obtaining a personal benefit to the Councillor is biased. Where a Councillor is biased in a decision, then the decision is flawed.

Apparent bias deals with the councillor's conduct and the surrounding circumstances. Councillor must ask whether all the relevant circumstances would lead a fair-minded and informed observer of reasonable fortitude to conclude that there was a real possibility, or a real danger, that their ability to weigh the public interest in making a decision appears biased.

Where a decision is tainted by apparent bias, then the decision is seen to be unfair and therefore flawed.

### Appendices

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

The principles are:

##### **Selflessness**

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

##### **Integrity**

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

##### **Objectivity**

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

##### **Accountability**

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

##### **Openness**

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

##### **Honesty**

Holders of public office should be truthful.

##### **Leadership**

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

## **Appendix B - Registering interests**

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

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

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

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

### **Non participation in case of disclosable pecuniary interest**

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in Table 1, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. You are able to make a brief statement prior to leaving the meeting to describe the context of your decision. Specific guidance regarding the declaration of interests at planning committee is available here: <https://www.local.gov.uk/publications/probity-planning-advice-councillors-and-officers-making-planning-decisions>

Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

5. Where you are the Chairperson of any committee have a disclosable pecuniary interest on a matter to be considered by you or you are being consulted upon for an officer decision, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for the Vice Chairperson or someone else to deal with it

### **Disclosure of Other Registerable Interests**

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

## Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest. You are able to make a brief statement prior to leaving the meeting to describe the context of your decision. Specific guidance regarding the declaration of interests at planning committee is available here: <https://www.local.gov.uk/publications/probity-planning-advice-councillors-and-officers-making-planning-decisions>

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

- a. your own financial interest or well-being;
- b. a financial interest or well-being of a relative or close associate; or
- c. a financial interest or wellbeing of a body included under Other Registrable Interests as set out in Table 2

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

9. Where a matter (referred to in paragraph 8 above) affects the financial interest or well-being:

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

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise, you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. You are able to make a brief statement prior to leaving the meeting to describe the context of your decision. Specific guidance regarding the declaration of interests at planning committee is available here: <https://www.local.gov.uk/publications/probity-planning-advice-councillors-and-officers-making-planning-decisions>

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

10. Where you are the Chairperson of any committee have another Registrable Interest or Non-Registrable Interest on a matter to be considered by you or you are being consulted upon for an officer decision, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for the Vice Chairperson or someone else to deal with it.

### Table 1: Disclosable Pecuniary Interests

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

Any employment, office, trade, profession or vocation carried on for profit or gain.

**Sponsorship** Any payment or provision of any other financial benefit (other than from the council) made to the Councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a Councillor, or towards his/her election expenses.

This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

#### Contracts

Any contract made between the Councillor or his/her spouse or civil partner or the person with whom the Subject Description Employment, office, trade, profession or vocation Councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director\* or a body that such person has a beneficial interest in the securities of\*) and the council—

- (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.

#### Land and Property Any beneficial interest in land which is within the area of the council.

‘Land’ excludes an easement, servitude, interest or right in or over land which does not give the Councillor or his/her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.

**Licenses** Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.

#### Corporate tenancies Any tenancy where (to the Member’s knowledge)—

- (a) the landlord is the council; and
- (b) the tenant is a body that the Councillor, or his/her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/ civil partners is a partner of or a director\* of or has a beneficial interest in the securities\* of.

#### Securities Any beneficial interest in securities\* of a body where—

- (a) that body (to the Councillor’s knowledge) has a place of business or land in the area of the council; and
- (b) either—
- (i) the total nominal value of the securities\* exceeds £25,000 or one hundredth of the total issued share capital of that body; or
  - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the Councillor, or his/ her spouse or civil partner or the person with whom the Councillor is living as if they were
    - ‘director’ includes a member of the committee of management of an industrial and provident society.
    - ‘securities’ means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and



Markets Act 2000 and other securities of any description, other than money deposited with a building society.

**Table 2: Other Registrable Interests**

You must register as an Other Registerable Interest:

- a) any unpaid directorships
- b ) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority
- c) any body
  - (i) exercising functions of a public nature
  - (ii) directed to charitable purposes or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member or in a position of general control or management spouses/civil partners have a beneficial interest exceeds one hundredth of the total issued share capital of that class.

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## **Draft procedure**

1. Introduction
2. Scope of the procedure
3. How to make a complaint
4. Anonymous complaints
5. Assessment procedure – step by step
  - a. complaint submission
  - b. initial assessment
  - c. notification of initial assessment outcome
  - d. consultation with Independent Person
  - e. formal investigation
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  - g. the committee process
  - h. procedure at committee
6. Confidentiality and Publication of decision notices / hearing outcomes
7. Withdrawal of complaints
8. Rights of appeal

### **1. Introduction**

In this document the term “Councillor” means an elected Councillor or a co-opted Member of Cheshire East Council or of a town or parish council within its area. This procedure covers complaints that a Councillor has failed to comply with their code of conduct. The Councillor complained against is referred to in this procedure as the “subject member”.

These arrangements set out:

1. how you can make a complaint about the conduct of a Councillor.
2. how the Council will deal with complaints about Councillors.

### *Codes of conduct*

Cheshire East Council has adopted a Code of Conduct for Councillors, which is available for inspection on the Council’s website or on request from the Monitoring Officer:

[monitoringofficercec@cheshireeast.gov.uk](mailto:monitoringofficercec@cheshireeast.gov.uk)

Each town or parish council must also adopt a code of conduct. If you wish to inspect a town or parish council’s code of conduct, you should look on their website in the first instance. You may also ask the town or parish clerk to allow you to inspect it.

### **2. Scope of the Procedure**

2.1 The Monitoring Officer can only deal with complaints that a Councillor has failed to comply with their Code of Conduct. If you wish to make a complaint about:-

- dissatisfaction with a decision or action of the Council or one of its committees
- a service provided by the Council
- the actions of someone employed by the Council

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- the Council's procedures or policies

you can do so using the Council's corporate complaints process or, in the case of a town or parish council, by contacting that council's clerk.

2.2 If your complaint is about a Councillor, then you can use this process. However, you should be aware that assessment criteria are applied to all complaints to ensure that the process focuses on complaints where there is a wider public interest in addressing the conduct complained about. You should consider the assessment criteria set out below before making your complaint in order to understand how your complaint will be dealt with.

2.3 The following points should also be noted before making a complaint under this procedure:

- (i) complaints can only be accepted if they relate to a Councillor's behaviour whilst they are acting, or giving the impression that they are acting, in their official capacity. Complaints which appear to be against a Councillor acting in their private capacity will be rejected;
- (ii) determinations under this procedure can only relate to a Councillor's conduct and cannot comment upon or interfere with any decisions they have been involved in.
- (iii) complaints against a town or parish council as a whole will be rejected and need to be referred direct to the council in question for consideration under their own procedures.
- (iv) The Council has no jurisdiction in respect of complaints against Clerks or other officers to town or parish councils as they are employees of their respective authorities and any such complaints will be rejected.

2.4 It would help in dealing with your complaint to know what your desired outcome might be. If you feel able to provide this information please do so. Please note that the Monitoring Officer has no power to suspend or disqualify a Councillor, withdraw a Councillor's allowance or change a decision that a Councillor has made or has been involved in making. The remedies which may be applied through this process are set out below.

2.5 There may be instances when a number of complaints will be received about the same Councillor from different Complainants that relate to the same incident. When a complaint is substantially the same it will be processed as a single complaint taking into consideration all of the complaints received up to the time the complaint is processed. A single decision notice will be issued and will reflect the fact there has been more than one Complainant associated with the matter, though all may not be named. If further complaints relating to the same matter are received after the complaint is being processed these will not be added to the complaint but the Complainants will be advised that a complaint about this matter is already being considered.

2.6 This guidance may be amended from time to time by the Audit and Governance Committee on the recommendation of the Monitoring Officer.

### 3. How to make a complaint

3.1 All complaints must be made in writing, using the form on our website [\\*link\\*](#) and submitted to the Monitoring Officer along with any supporting information –

- a) Electronically to [monitoringofficercec@cheshireeast.gov.uk](mailto:monitoringofficercec@cheshireeast.gov.uk), or

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- b) By post to The Monitoring Officer, Cheshire East Council, c/o Municipal Buildings, Earle Street, Crewe CW1 2BJ

3.2 Hard copies of the form can be made available on request. We will assist you if you have a disability that prevents you from making a complaint or makes it difficult for you to put your complaint in writing. We can also help if English is not your first language.

3.3 It is very important that you set your complaint out fully and clearly and provide all the information at the outset. You should also provide any documents or other material that you wish to be considered, wherever possible. You should tell us exactly what each person you are complaining about said or did that has caused you to complain. If you are sending supporting documentation please cross reference it against the summary of your complaint. You should be as detailed as possible and substantiate your complaint where you can, to demonstrate why you believe that the Councillor(s) complained about has breached the Code of Conduct.

#### **4. Anonymous complaints**

4.1 Anonymous complaints will not normally be investigated, unless there is a clear public interest in doing so and the Monitoring Officer considers that a fair investigation can be carried out.

4.2 Requests from Complainants for the Monitoring Officer to withhold their identity, so that they remain anonymous to the subject member, are not ordinarily granted. The Monitoring Officer has to balance the right of the subject member to properly understand the complaint against them and respond to it, with the rights of the person making the complaint. More often than not, this means that the subject member will need to be told who is making the complaint.

4.3 A Complainant can ask for their identity to remain confidential by completing the appropriate section of the complaint form. Requests will only be granted if there is a good reason. The following criteria will be used when requests are considered:

- (i) whether the Complainant reasonably believes that they, or somebody closely connected to them, will be at risk of harm or harassment if their identity is disclosed;
- (ii) that the Complainant is reasonably concerned about the consequences to their employment, or that of somebody closely connected to them, if their identity is disclosed;
- (iii) that the Complainant, or somebody closely connected to them, suffers from a serious medical condition and there is evidence of medical risks associated with their identity being disclosed;
- (iv) whether the specifics of the complaint will disclose who has made the complaint even without confirming the Complainant's identity;
- (v) the degree to which the subject member may be prejudiced by withholding the Complainant's identity; and
- (vi) the public interest: In some cases the public interest in proceeding with the complaint may outweigh the Complainant's wish to have their identity withheld.

4.4 The Monitoring Officer will only grant your request if s/he considers that a fair investigation can still be carried out. You will be informed of the decision and the reasons for it. If it is not considered appropriate to grant confidentiality the Complainant will be offered the opportunity to withdraw the complaint, but this is subject to the determination made by the Monitoring Officer regarding the public interest in proceeding.

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## 5. Assessment procedure – step by step

**\*Insert diagram / flow chart of main steps & responsibilities\***

### 5.1 Complaint submitted:

5.2 Complainant submits a completed complaint form with any supporting information to the Monitoring Officer. The Monitoring Officer will acknowledge receipt, and confirm whether any request for anonymity has been granted, within 5 working days. Please see section 3 of this procedure for details on how to obtain a form, and how to submit it.

### 5.3 Initial assessment:

5.4 The Monitoring Officer will carry out an initial assessment to determine whether the complaint is within this procedure and, if so, whether it should be progressed. This will normally be done within 10 working days of receipt of the complaint.

5.5 The Monitoring Officer will firstly check that the complaint satisfies the following tests:

- a. The complaint is against one or more named Councillors of Cheshire East Council or a town or parish council within the borough;
- b. The subject member was in office at the time of the alleged conduct;
- c. The subject member was acting in their official capacity as a member at the time of the alleged conduct;
- d. The Complainant has provided enough information to enable the Monitoring Officer to form a view as to whether or not a breach of the code has or might have occurred.

5.6 If a complaint does not satisfy the above tests, no further action will be taken. The Complainant and subject member will be notified within 5 working days.

5.7 Complaints that satisfy the initial tests at paragraph 5.5 above, will be considered in more detail and will usually be rejected if, in the opinion of the Monitoring Officer, any of the following applies:

- a. the complaint is the same or substantially the same as a complaint previously dealt with, whether submitted by the Complainant or some other person;
- b. it is over 6 months since the alleged behaviour occurred and it would be unfair, unreasonable or otherwise not in the public interest to pursue unless there are, in the Monitoring Officer's opinion, exceptional circumstances which would warrant the complaint being progressed;
- c. the complaint is considered, on an objective basis, to be trivial and there are no public interest reasons to pursue it;
- d. the complaint discloses such a minor technical breach of the Code of Conduct that it is not in the public interest to pursue;
- e. the complaint is or appears to be malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive and the complaint is not considered to disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration;
- f. the Subject Member has remedied or made reasonable endeavours to remedy the issues to which the complaint relates (for example, an early in person apology), and the complaint does

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not disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration;

- g. the complaint is about a person who is no longer a member of a relevant authority;
- h. the complaint is from a councillor about another councillor of their council and the Monitoring Officer considers the allegations to be such that the issues between the councillors ought to be capable of resolution between them, whether with or without the assistance of their Clerk or some other person; and
- i. it would otherwise be inappropriate to expend the Council's resources on determining the complaint having regard to the circumstances of the complaint, any previous related complaints and the public interest. A complaint will be rejected if the Monitoring Officer considers the likely costs of progressing a matter are disproportionate to the seriousness of the issue and the possible range of outcomes.

5.8 If the complaint indicates that a criminal offence may have been committed (or some other regulatory infraction) the matter will be reported to the appropriate regulatory body. It may be the case that the complaint cannot be further considered under this process until an associated external investigation has been completed.

5.9 If your complaint also relates to or raises concerns about a council service (or an officer of the council), it may first need to be dealt with under the relevant corporate complaints/disciplinary process that applies. This is so that the outcome and any proposed action resulting from any such process can be taken into account when assessing the code of conduct complaint.

5.10 When there is insufficient information to make a determination as to whether the conduct complained of may demonstrate a potential breach of the Code of Conduct the Monitoring Officer may offer the Complainant a further 7 days to provide further information to support the complaint. If further information is not provided within 7 days of being requested, the complaint will be rejected.

5.11 Following initial assessment, the Monitoring Officer may decide to:-

- Take no further action
- Consult with the Independent Person on next steps to be taken in the determination of the complaint.

#### **5.12 Notification of initial assessment decision**

5.13 Once a decision following initial assessment has been made, letters of notification will then be sent to the Complainant and the subject member within 5 working days confirming the decision made and the reasons for it. If the decision is to take no further action, the subject member will be provided with a precis of the complaint and, subject to the provisions on anonymity, the identity of the complainant. The Monitoring Officer may offer advice to the complainant, subject member or both.

5.14 If the decision is to consult with the Independent Person on next steps to be taken in the determination of the complaint, then unless s/he has already done so, the Monitoring Officer will supply the subject member with a copy of the complaint (and accompanying materials) and will be invited to respond to it in writing. Data protection rules may require some information to be removed from the complaint before it is submitted to the subject member. The complainant will

be notified if this is necessary. The subject member will be invited to respond to the complaint within 7 days of the date of the notification letter.

**5.15 Consultation with the Independent Person**

- 5.16 Once a complaint has passed the initial assessment stage of the procedure, the Monitoring Officer will consult with the Independent Person as to the next steps to be taken. This consultation may, at the Monitoring Officer's discretion, take place by way of a meeting, telephone call, or exchange of emails. The approach taken will reflect the nature of the matter under consideration, the level of complexity and supporting paperwork, and potential seriousness of the allegations.
- 5.17 This provides an opportunity for the Monitoring Officer and Independent Person to consider the complaint and the subject member's response to it. The purpose is for the Monitoring Officer, in consultation with the Independent Person, to decide whether it appears that a breach of the code may have occurred and to determine what action, if any to take on the matter.
- 5.18 The Monitoring Officer is not determining, at this stage, whether or not there has been a breach of the Code. The Monitoring Officer is determining whether the circumstances are such that:-
- a) No further action should be taken
  - b) The matter is suitable for informal resolution
  - c) The matter should be formally investigated
- 5.19 In addition to revisiting the initial assessment criteria (where appropriate), and to determine the appropriate next course of action, the Monitoring Officer and Independent Person will consider:-
- a) Whether there is sufficient information available to decide what action should be taken
  - b) The seriousness of the matters alleged
  - c) The likely effectiveness of the remedies available
  - d) The public interest
- 5.20 Once the Monitoring Officer has reached a decision, letters of notification will then be sent to the Complainant and the subject member confirming the decision made and the reasons for it.
- 5.21 If the decision is to take no further action, the Monitoring Officer may offer advice to the complainant, subject member or both. The Monitoring Officer may also notify the relevant Group Leader, Whip or town or parish clerk of the complaint and the decision taken.
- 5.22 If the decision is that the matter is appropriate for informal resolution, the Monitoring Officer will make recommendations accordingly. Informal resolution options include:-
- a) An explanation and/or apology from the subject member
  - b) Mediation
  - c) Training
  - d) Referral of the matter to the Group Leader, Whip and/or Parish Clerk to be resolved where the complaint is between two members and political group intervention/agreement is appropriate.
  - e) Some other practical "conflict management" agreement between the complainant and subject member



- 5.23 The Monitoring Officer may take into account the response to and effectiveness of recommendations made for informal resolution in deciding whether or not the matter should nevertheless be formally investigated and pursued further under this process.
- 5.24 If the decision is that the matter should be formally investigated, then the following provisions of this procedure apply.
- 5.25 **Formal investigation**
- 5.26 If the Monitoring Officer decides that the complaint merits formal investigation, an Investigating Officer will be appointed. This may be another senior officer the council, another council or an external investigator. The Monitoring Officer will determine the terms of reference for any investigation in consultation with the Independent Person.
- 5.27 The Terms of Reference of the investigation will not be published at this stage, but rather at the stage a draft report is sent to the complainant and subject councillor. The balance of the public interest has usually shifted towards disclosure at this point, and the Terms of Reference would be likely to be disclosed in response to a Freedom of Information request.
- 5.28 **The investigation process**
- 5.29 The investigator is independent from the complainant and the subject councillor. The investigator will assess the complaint, speak to the individuals and any witness they consider relevant, and then produce a report to the Monitoring Officer.
- 5.30 The investigation must be proportionate in resources and costs to the complaint made.
- 5.31 Where there are multiple complaints or complainants the investigator may select a representative sample or to select the individual to take evidence.
- 5.32 The process will usually be:
- a) Interview of Complainant and any relevant supporting witness, either remotely or in person
  - b) Interview of Member(s) and any relevant supporting witness
  - c) Further interview with Complainant to consider the Members response
  - d) Further interview with the member to consider any new matter or evidence arising
  - e) Unless there is an exceptional circumstance, no further evidence or additional witness or will be permitted after this stage
  - f) Draft report completed
  - g) Draft report shared with Monitoring Officer to ensure it has met the requirements of the Terms of Reference for the investigation
  - h) The Complainant and Member are asked to comment on any issues of factual accuracy contained within the draft report
  - i) The draft report is finalised and served on Monitoring Officer, Complainant and Member
  - j) The Monitoring Officer in consultation with the Independent Person will decide if it is in the public interest to continue.

- k) The Complainant and Member will normally be given two opportunities to take part in the process. If there is any failure to participate the report will be completed without that person assistance.

Unless there are exceptional circumstances.

### **5.33 The Committee Process**

5.34 The process will usually be:

- a) The investigators report and a covering committee report from the Monitoring Officer will be provided to the Committee.
- b) The covering report will contain a summary of the issues and recommendation of the report, the costs and time taken and any issues in respect of participation.
- c) The committee report and investigators report will be considered by the Monitoring Officer, who will confirm the procedure for the committee
- d) The Monitoring Officer will appoint a Democratic Services Officer to administer the Committee and a legal officer to advise the Committee
- e) 21 days from notification of the matter proceeding to Committee, the Subject Member to file a written summary of their response to the report stating areas of agreement disagreement or admission and reassigning any legal issue. If no response is received in 21 days, the Subject Member will not be able to rely on that evidence
- f) 14 days thereafter the independent investigator to consider the submission and provide a response. In the event the investigator considers it necessary to contact either the Subject Member or third party to clarify any aspect they will notify the Monitoring Officer with reasons
- g) 14 days or as soon as reasonably practicable thereafter the Committee shall meet and decide if there is any breach of the code.

5.35 In the event the subject member does not attend and no sufficient reason is given the matter will proceed. If in the Monitoring Officer's view, a sufficient reason is given such as illness supported by a certificate, the Committee will agree a further date.

5.36 Unless exceptional circumstance the Committee will decide the matter on the second occasion.

5.37 Notification will be deemed to have occurred 3 days after posting or email sent.

### **5.38 Procedure at Committee**

5.39 If there are any legal issues identified by the subject member in their response, they will be considered at the start of the meeting.

5.40 The Committee will determine whether any party can call witnesses, and if so, the procedure governing witness involvement.

5.41 The Committee will then hear from the investigation officer who will present the report and give any response to the submissions from the subject member. Although there is no strict time limit this usually this will be no more than 1 hour. Opportunity for Committee to ask questions

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- 5.42 The subject member will respond and will be entitled to expand upon the issues raised in their response to the investigators report. Usually this will be no more than 1 hour. Opportunity for Committee to ask questions
- 5.43 The Committee may then decide if they require further information from either investigator or subject member, consult with the Independent Person, ask any further questions or adjourn to make a decision.
- 5.44 After the Committee has adjourned to make a decision it may exculpate the subject member or decide that they consider the subject member has breached the code
- 5.45 If it is decided the subject member has breached the code they will then (if a borough councillor) hear from the subject member if they have anything further to say, and then decide any appropriate penalty
- 5.46 The decision is based on a balance of probabilities, based on the information before the Committee

## **6. Confidentiality and Publication of decision notices / hearing outcomes**

- 6.1 The assessment of complaints will be conducted in private by the Monitoring Officer or his/her representative.
- 6.2 Data protection and freedom of information requirements will be complied with which will mean that complaint information will not normally be disclosed to the press or public.
- 6.3 On completion of the assessment or determination of a complaint a decision notice will be issued as detailed above. If a complaint is upheld, it will be published on Cheshire East Council's website, and it will be available for public inspection at Cheshire East Council's offices for 6 years from the date of issue.

## **7. Withdrawal of complaints**

- 7.1 Requests to withdraw complaints will normally be granted but in considering such a request from the Complainant the Monitoring Officer will consider the following factors:
  - a) Whether the public interest in taking action on the complaint outweighs the Complainant's desire to withdraw it;
  - b) Whether the complaint is such that action can or should be taken on it without the Complainant's participation; and
  - c) Whether there appears to be an identified underlying reason for the request to withdraw the complaint; such as information to suggest that the Complainant may have been improperly pressured into withdrawing the complaint.
- 7.2 Even if a request to withdraw a complaint is granted, the Monitoring Officer may still refer it for assessment under these procedures or refer it to the appropriate professionals or body if, in the opinion of the Monitoring Officer, such action is reasonable and proportionate. This may be

appropriate, for example, if the complaint discloses potentially significant probity issues, possible criminal offences or safeguarding issues.

**8. Rights of appeal**

- 8.1 [There is no right of appeal for either the subject member or complainant in relation to a decision of the Monitoring Officer or Committee. Concerns about the process adopted in respect of a specific matter may be referred to the Local Government Ombudsman.] *subject to a further paper to Committee on possible appeal / review arrangements.*

**Comparator table:**

Ethics Report Best Practice	LGA Model Code Provisions	CEC draft	Group Leader recommendations
Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.	As a Councillor:  8.2 I cooperate with any Code of Conduct investigation and/or determination.	The Working Group has asked that this is deleted from the Cheshire East Councillor Code of Conduct on the basis that if a councillor cannot be legally compelled to cooperate, a Councillor should not be expected to cooperate.	That the Model Code should be adopted, and para 8.2 reinserted.
Extract from Plymouth City Council code of conduct: <i>Disrepute</i> Councillors must not act in a manner which could be seen to bring the council or the role of councillor into disrepute.	As a councillor: 5.1 I do not bring my role or local authority into disrepute.	The working group are recommending this is limited to 'I do not bring my role of Councillor into disrepute'. This limitation means that the draft Code does not include guidance to specifically address behaviour that may bring the Council itself into disrepute.	That the Model Code should be adopted, but that wording should be added to recognise the ability of Councillors to bring legitimate challenge in relation to Council functions and operation.
Recommendation 6: Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.	As a councillor: 10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt. 10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.	The working group concluded that the requirement for maintaining a running total from a single source was not practicable. The working group considered that the Councillor code and the Officer code should be the same.  As a Councillor: 10.2 I will only accept gifts and hospitality when on a scale appropriate to the circumstances, and where it is apparent that no cause could reasonably arise for adverse criticism about the acceptance of the gift or hospitality. Hospitality is usually acceptable when the invitation is corporate not personal. Whatever gift/hospitality is provided to you, other than a gift or hospitality of nominal value only (such as drink or small items of stationery), you should report the circumstances and the type of hospitality to the Monitoring Officer. Small insignificant gifts of a value of less than £50, such	That there is no objection to the proposed amendment.

		as pens, diaries, calendars, mouse mats or mugs, may be accepted. 10.3 I will register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.	
Predetermination and predisposition and bias (does not appear in Report)	Does not appear in the model code.	Draft includes paragraphs relating to predetermination and predisposition, and bias.	That the draft Code should reference relevant guidance but not attempt to repeat or summarise it.
<p>Recommendation 13: Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.</p> <p>Recommendation 14: The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.</p> <p>(NB: Both recommendations require a change to the law)</p>	Not included as requires a law change	The working group favour the concept of an appeal process (for subject members only) and have requested a more detailed paper on the issue to be provided to A&G for discussion.	That there is no objection to this issue being considered in more detail at Committee.
Recommendation 15: The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the	Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on	On completion of the assessment or determination of a complaint a decision notice will be issued as detailed above. If a complaint is upheld, it will be published on Cheshire East Council's website, and it will be available for public	That all decision notices where there is a definitive outcome (of breach or no breach of the Code) should be routinely published unless the Monitoring Officer agrees there is a reason not to (e.g. risk or harm or harassment)

complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.	inspection at Cheshire East Council's offices for 6 years from the date of issue.	
	Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.	The working group at para 5.13 felt it important not to allow the Monitoring Officer to inform the Group Leader or Whip of relevant member complaint matters. The working group considered that it was not best practice for the Group Leader or Administrator/ Whip to be routinely informed of conduct matters, and that it would in any event not be useful particularly if complaints had not been upheld	That the Model Code Best Practice 15 provision be incorporated into the draft Code.

#### Additional notable changes to draft procedure:

1. The formal report considered by the sub-committee will include a record of the observations of any witness and the subject councillor (assuming they have chosen to cooperate). The requirement for 'live' witness is therefore not mandatory and given the cost and time involved should only be considered in the most exceptional circumstances. The officer recommendation is that no witnesses should be involved in the sub-committee hearing itself, and that all witness evidence should be dealt with at the investigation stage of the process. Subject only to an exceptional circumstance provision. This officer recommendation was rejected by the working group, on the basis that this may prejudice the subject member's presentation of their case, and that the ability to call witnesses and the number of witnesses called should be at the discretion of the sub-committee. **Group Leaders considered that Code of Conduct hearings should take the form of a committee meeting rather than adversarial process, and that witnesses should be identified and given adequate opportunity to be included within the investigation part of the process.**
2. The working group are recommending the removal of the Monitoring Officer's discretion and that no changes are made to the adopted process without the consent of the Audit and Governance Committee. The new process will be fixed and require clear compliance if any matter is to proceed to subcommittee. The working group considered that the process should have the oversight of the Committee, with any changes to it to be considered by Members. **Group Leaders were content for the Committee to deal with proposed amendments to procedure as they arose.**

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*Working for a brighter future together*

## **Audit and Governance Committee**

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<b>Date of Meeting:</b>	26 May 2022
<b>Report Title:</b>	Maladministration Decision Notices from Local Government and Social Care Ombudsman – January to March 2022
<b>Report of:</b>	David Brown, Director of Governance & Compliance
<b>Report Reference No:</b>	AG/21/21-22
<b>Ward(s) Affected:</b>	ALL

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### **1. Purpose of Report**

- 1.1.** This report provides an update on the Decision Notices issued by the Local Government and Social Care Ombudsman “the Ombudsman” when his investigations have found maladministration causing injustice to complainants. The report details the decisions made between 20<sup>th</sup> January 2022 and 29<sup>th</sup> March 2022 and the actions of the responsible services to address the cause of the complaints and lessons learned. It is not possible to report on any Decision Notices issued from the end of March 2022 onwards, as the Ombudsman imposes a 6-week reporting embargo. Any decisions received after 29<sup>th</sup> March 2022 will be reported at a subsequent Audit & Governance Committee meeting.

### **2. Executive Summary**

- 2.1.** During the period between 20<sup>th</sup> January 2022 to 29<sup>th</sup> March 2022 the Council received three Decision Notices in which the Ombudsman has concluded that there has been maladministration causing injustice. The details of these cases can be found in Appendix 1.

### **3. Recommendations**

**3.1.** See Appendix 1.

### **4. Reasons for Recommendations**

#### **4.1. Highways complaint**

The complainant originally complained in September 2020 at which point, due to previous correspondence received, their issue was escalated to a Stage 2 complaint. The complaint concerned the ownership of, and lack of maintenance of a culvert and a ditch which resulted in the complainant's land being flooded. A Stage 2 response letter was issued to the complainant on 6 October 2020 which confirmed among other things that the culvert under the highway was the responsibility of the Council but that the ditch was the responsibility of private landowners. It also noted that there was no record of serious flooding at this location.

**4.1.2** The complainant was dissatisfied with the Stage 2 response and took their complaint to the Ombudsman who found fault with the Council's communication with the complainant and recommended some service improvements.

**4.1.3** The Ombudsman found that the Council had failed to properly investigate the blocked culvert. It had also given the complainant inconsistent information about whether he was subject to Special Contact Measures or not. The Council accepts that the responsibility for the culvert that runs under the highway in front of the complainant's home lies with Cheshire East Highways. The culvert that continues from the highway under the public space is the responsibility of Cheshire East Council and is maintained by the Facilities Team. This culvert was subject to a blockage which was cleared in October 2020. An apology was issued to the complainant.

**4.1.4** In relation to the issue of Special Contact Measures the Council has confirmed that during the time being complained about, the complainant was not subject to formal Special Contact Measures, although he was designated a single point of contact for his enquiries, but this was a decision taken by the service. The complainant has also been asked to provide details of any specific 'reasonable adjustments' that he needs when communicating with the Council.

#### **4.2. Special Educational Needs and Disabilities (SEND) Complaint**

The complainant originally submitted their complaint in January 2020 which concerned the delays in completing an Education, Health & Care Plan (EHCP) in respect of their son, and poor communication from the SEND Team. A

Stage 1 complaint response was issued on 10 February 2020 which upheld the complaints.

**4.2.2** In July 2020 the complainant requested that their complaint be escalated to Stage 2 due to lack of progress and communication from the SEND Team. Although, several months had passed since the initial complaint response, given the lack of progress it was agreed that this complaint should move to Stage 2. A Stage 2 response was issued on 29 July 2020, which again upheld the complaints about a lack of communication from the SEND Team.

**4.2.3** The complainant subsequently took their complaint to the Ombudsman who upheld the complaints about delays and lack of communication and recommended an apology, a compensation payment for the missed provision and service improvements.

**4.2.4** An apology was issued to the complainant. The service improvements recommended were reminders to be issued to staff in procedural matters relating to Elective Home Education and Education Other Than at School. The reminder was issued in March 2022.

#### **4.3** Highways Complaint

**4.3.1** The complainant originally submitted their complaint in October 2020. This concerned flooding outside their property. A Stage 1 response was issued on 19 October 2020.

**4.3.2** In May 2021 the complainant escalated their complaint to Stage 2. The Stage 2 response was issued on 26 May 2021. This identified that the location might benefit from further drainage investigation but that it was not a priority for work within the borough.

**4.3.3** The complainant subsequently took their complaint to the Ombudsman who found that the Council did not take proper action in responding to her complaint about the flooding problem on the carriageway outside her property.

**4.3.4** The Council agreed to the recommendation from the Ombudsman to complete the investigation work into the flooding outside the complainant's property within 2 months. This was completed in April 2022 and confirmed that any blockage in the drains outside the property had now gone. An apology was issued to the complainant.

#### **4.4** **Comments from SEND and Highways Services**

##### **4.4.1** **SEND**

The areas raised as concerns relate to the periods mainly between 2018-2022, since this time the service has made significant changes to systems and processes. We have clear and robust systems in place at all stages starting from when a needs assessment request is submitted.

There has been an increase in the SEND Team capacity across all levels of staffing to ensure that we are able to continue to sustain and further improve the service. However, increased demand in requests for needs assessment continues to put pressure on the service. This is a national issue and recognised in the proposed changes in the SEND system in the recently published green paper

Following our Ofsted re-inspection in 2021 the SEND service has continued to review and improve systems and processes to ensure there is increased management oversight and regular casework meetings to make sure timely decisions and support is in place.

We have a training programme in place for all staff to access which includes both internal and external training/workshops this has ensured that all staff have access to the most relevant and up to date knowledge, skills and training required for their role.

The SEND service has developed strong working relationships with wider children's services teams to ensure they are working closely. Regular meetings with the attendance and out of school team take place in relation to those children who have an EHCP who are electively home educated (EHE)/educated other than at school (EOTAS)/or have medical needs so cannot attend school, to ensure multi agency plans of support are in place and that tuition is provided if children are not attending education to minimise the likelihood of injustice. Additional capacity is currently being put in place to support children on a plan that are EHE or EOTAS.

#### **4.4.2 Highways**

The Service is currently reviewing the way that it engages with its customers. As well as an in-depth review of its processes and undertaking regular customer journey audits to ensure quality and timeliness of responses, it is also investing money into additional customer focussed resource to compliment the improvements to systems and processes. Continual improvements are being driven at a service level through the corporate Customer Experience project and with the benefit of additional oversight and monitoring via performance indicators of that part of the customer journey delivered by the Council's Highways Services provider.

This is in conjunction with forging closer working relationships with the Council's Customer Services team, seeking guidance on a case-by-case basis to avoid similar issues arising in the future wherever practicable.

The service has developed and implemented a robust process for the administration of all remaining open Ombudsman cases, including a tracker, to ensure that any investigations are undertaken, any agreed actions are fulfilled, and responses returned to the LGSCO all within an agreed timeframe.

In addition, and as part of new governance processes developed, the service now updates its Risks and Issues Register to include details of all Ombudsman investigations where maladministration causing injustice to complainants is identified, providing more visibility within the Highway Service and as a route for escalation where appropriate.

## **5. Other Options Considered**

- 5.1. Not Applicable
- 5.2. Not Applicable
- 5.3. Not Applicable

## **6. Background**

- 6.1. The Local Government Act 1974 established the Local Government and Social Care Ombudsman. It empowers the Ombudsman to investigate complaints against councils and adult social care providers and to provide advice and guidance on good administrative practice. Once a complainant has exhausted the Council's Complaints procedure, their next recourse, should they remain dissatisfied with the Council's response, is to contact the Ombudsman.
- 6.2. The Ombudsman will assess the merits of each case escalated to them and seek clarification from the Council as necessary before making the decision to investigate a complaint. Once the Ombudsman decides to investigate, they will try to ascertain if maladministration has occurred and whether there has been any resulting injustice to the complainant because of the maladministration.
- 6.3. In instances where maladministration with injustice is found, the Ombudsman will usually make non-legally binding recommendations which they consider to be appropriate and reasonable. Although not legally binding, refusal to accept the Ombudsman's recommendation(s) will trigger a Public Report.
- 6.4. A Public Report is a detailed account of the complaint, outlining the failures by the Council in the investigation; this can have a significant damaging effect on the Council's reputation.

## **7. Consultation and Engagement**

Not Applicable

## **8. Implications**

**8.1. Legal**

8.1.1. There are no legal implications flowing directly from the content of this report.

**8.2. Finance**

8.2.1. If fault causing injustice is found, the Council can be asked to pay compensation to a complainant, the level of which is determined on a case-by-case basis. The cost of such compensation is paid for by the service at fault. In the cases outlined in this report the Council was required to make compensation payments totalling **£1200**.

**8.3. Policy**

8.3.1. Not Applicable

**8.4. Equality**

8.4.1. Not Applicable

8.4.2. Not Applicable

**8.5. Human Resources**

8.5.1. Not Applicable

**8.6. Risk Management**

8.6.1. Not Applicable

**8.7. Rural Communities**

8.7.1. Not Applicable

**8.8. Children and Young People/Cared for Children**

8.8.1. Not Applicable

**8.9. Public Health**

8.9.1. Not Applicable

**8.10. Climate Change**

8.10.1. Not Applicable

<b>Access to Information</b>	
Contact Officer:	Alan Ward, Complaints Officer Alan.ward@cheshireeast.gov.uk 01270 686200
Appendices:	Appendix 1 – see below
Background Papers:	N/A

## Appendix 1 - Ombudsman Decisions where Maladministration with Injustice has Taken Place

January 2022 to March 2022

	Summary and Ombudsman's Final Decision	Agreed Action	Action Taken	Comments from Service
Highways Complaint 1	<p>Decision Date: 20 Jan 2022</p> <p>Mr X complained the Council failed to accept responsibility for maintaining a blocked culvert on land near his home. Mr X also complained the Council failed to acknowledge his disability or his need for reasonable adjustments under the Equality Act. The Ombudsman found there was fault causing injustice when the Council failed to properly investigate the blocked culvert, when it gave inconsistent information about special contact measures, and when it failed to properly engage with Mr X about his disability.</p> <p><a href="#">20 009 100 - Local Government and Social Care Ombudsman</a></p>	<p>Within four weeks of the final decision, the Council agreed to:</p> <ul style="list-style-type: none"> <li>• Apologise to Mr X for the failings I have identified.</li> <li>• Set out plans for how it intends to address the issues experienced around its SCM policy.</li> <li>• Reach out to Mr X to understand his disability and what reasonable adjustments he would like the Council to make in future.</li> <li>• Instruct its insurers to consider Mr X's claim for damage floodwater caused to his home. If necessary, the Council's insurers should appoint a suitably qualified expert to assess the damage and determine its cause.</li> </ul> <p>Decision Statement 11</p> <ul style="list-style-type: none"> <li>• Pay Mr X the sum of £600 to recognise the distress its faults caused. This is made up of £300 for not properly investigating the flooding problems over several years, £150 for failing to properly follow its SCM policy, and £150 for failing to properly engage with him about his disability.</li> </ul>	<p>An apology letter was issued to the complainant on 17 February 2022. This apologised for the issue over who was responsible for the culvert; our failure to engage with him with regards to his disability and the confusing and inconsistent information he received about whether or not he was subject to any special contact measures.</p> <p>Our claims handlers have also been in contact with the complainant with regards to progressing his claim and a payment of £600 has been made to him.</p> <p>The complainant has provided a list of what reasonable adjustments he expects the council to make when communicating with him but these are actually</p>	<p>All recommended actions have been completed by the service.</p> <p>Claims handlers continue to seek evidence from the resident relating to floodwater damage.</p>

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			standards that we would apply to how we communicate with any customer, rather than specific reasonable adjustments.	
Special Educational Needs Complaint	<p>Decision Date: 8 Feb 2022</p> <p>Summary: Ms X complained about fault and delay in the way the Council provided support for her child's special educational needs and care needs. We cannot say that on the balance of probabilities her child missed out on education, but the fault did cause uncertainty and distress as to whether the outcome might have been different, which is in itself an injustice. Recommendations for an apology, financial payment and service improvements are made.</p> <p><a href="#">20 013 619 - Local Government and Social Care Ombudsman</a></p>	<p><b>Within four weeks of the final decision</b></p> <p>78. The Council will apologise to Ms X and Y for the fault I have identified.</p> <p>79. The Council will pay Ms X £500 for the distress and uncertainty caused to her and Y as a result of the faults identified.</p> <p><b>Within two months of the final decision</b></p> <p>80. The Council will remind officers:</p> <ul style="list-style-type: none"> <li>• To discuss, record and action requests for professional advice made by parents during EHC needs assessments. If the Council decides a parent request for advice is not a 'reasonable request' under Special Educational Needs and Disability Regulations 2014, Regulation 6, it should provide a decision in writing giving reasons.</li> <li>• That parents can withdraw from home education at any time and officers should discuss this fully with parents and consider whether the case should be referred to colleagues, for example school admissions or officers responsible for children missing from education or who have medical needs.</li> <li>• That advice about the criteria for EHC assessments or EOTAS should not depart from the legal tests set out in legislation and statutory guidance.</li> </ul>	<p>An apology letter was issued to the complainant on 7 March 2022. This apologised for the delays in the EHC needs assessment process and for the shortcomings in the advice provided by SEND staff.</p> <p>The payment of £500 has been issued to the complainant.</p> <p>A reminder was issued to all staff on 7 March 2022.</p>	<p>The areas raised as concerns relate to the periods mainly between 2018-2022, since this time the service has made significant changes to systems and processes. We have clear and robust systems in place at all stages starting from when a needs assessment request is submitted.</p> <p>There has been a further increase in the SEND Team capacity across all levels of staffing to ensure that we are able to continue to sustain and further improve the service.</p> <p>Following our re-inspection the SEND service has continued to review and improve systems and processes to ensure there is increased management oversight and regular casework meetings to make sure timely decisions and support is in place.</p> <p>We have a training programme in place for all staff to access which includes both internal and</p>



				<p>external training/workshops this has ensured that all staff have access to the most relevant and up to date knowledge, skills and training required for their role.</p> <p>We have developed our links across wider teams to ensure we are working closely with managers and staff across education, we have regular meetings with the attendance and out of school team in relation to those children who have an EHCP who are EHE/EOTAS/medical needs to ensure multi agency plans of support are in place.</p>
Highways Complaint 2	<p>Decision Date: 14 Feb 2022</p> <p>Summary: Miss X complained the Council did not take proper action in response to her complaint about a flooding problem on the carriageway outside her property. The Council was at fault because it delayed completing an investigation. This caused Miss X uncertainty, frustration and time and trouble. The Council has agreed it will apologise to Miss X and pay her £100 for the frustration, time and</p>	<p>Within one month of the final decision, the Council has agreed to apologise to Miss X and pay her £100 for the frustration, time and trouble the matter has caused her. Within two months of the final decision, the Council has agreed it will complete its investigation and inform Miss X of the outcome and the action it proposes to take. The Council will also inform us of the outcome and the action it proposes to take.</p>	<p>The payment has been made to the complainant and an update has been provided to her following investigation and jetting work.</p>	<p>All recommended actions have been completed by the service.</p> <p>Since the closure of the case by the Ombudsman, we have made further contact with the customer following on from a recent site visit and provided a comprehensive update.</p>

	<p>trouble the matter has caused her. The Council will also complete its investigation and inform Miss X of the outcome and the action it proposes to take.</p> <p><a href="#">21 006 817 - Local Government and Social Care Ombudsman</a></p>			
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*Working for a brighter future together*

## **Audit and Governance Committee**

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<b>Date of Meeting:</b>	26 <sup>th</sup> May 2022
<b>Report Title:</b>	Annual Risk Management Report 2021/22
<b>Report of:</b>	Jane Burns, Executive Director Corporate Services
<b>Report Reference No:</b>	AG/40/21-22
<b>Ward(s) Affected:</b>	All

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### **1. Purpose of Report**

- 1.1. Effective risk management is central to good governance and supports the efficient delivery of the Council's corporate plan objectives. The Audit and Governance Committee provides an independent assurance to the Council on the adequacy of the risk management framework.

### **2. Executive Summary**

- 2.1. This report provides the Audit and Governance Committee with an update on the Strategic Risk Register for the period Quarter 4 2021-22, and a reflection on the full year of 2021-22, supported by the detail provided in Appendices A-C.

### **3. Recommendations**

- 3.1. That the Annual Risk Management Report 2021/22 is considered and received.

### **4. Reasons for Recommendations**

- 4.1. Risk management is central to facilitating good governance and the achievement of corporate objectives. As a publicly accountable body, the Council must demonstrate effective identification and management of the risks that threaten the achievement of its corporate objectives, the effectiveness of its operations, and reliable financial reporting.
- 4.2. The Audit and Governance Committee have responsibility for monitoring the effective development and operation of risk management across the Council.

## 5. Other Options Considered

- 5.1. No alternative options considered; this is an update report to support the Committee in meeting its responsibilities under its Terms of Reference.

## 6. Background

- 6.1. The update to Committee in November 2021 set out refreshed and refocused strategic risks. The Corporate Leadership Team risk owners and risk managers reviewed these strategic risks during Quarter 3 and have done so again in Quarter 4. Table 1 sets out the summary register with the net scores for each Quarter during 21/22.

Table 1

Ref	Risk	Q1	Q2	Q3	Q4	Direction of Travel
SR 1A	Increased Demand for Adult's Services	16	16	16	16	↔
SR 1C	Increased Demand for Children's Services	16	16	12	9	↓
SR 2	NHS Funding and Integrated Care System	16	16	16	16	↔
SR 3	Financial Management and Control	9	9	9	9	↔
SR 4	Information Security and Cyber Threat	12	12	12	12	↔
SR 5	Business Continuity	9	9	9	9	↔
SR 6	Organisational Capacity and Demand	12	12	12	12	↔
SR 7	Council Funding	16	16	12	12	↔
SR 8A	Governance and Decision Making	9	9	9	9	↔
SR 8B	Political Uncertainty	8	8	8	12	↑
SR 9	Capital Projects	12	12	6	6	↔
SR 10 (O)	Infrastructure Investment (Opportunity)	12	12	12	12	↔
SR 11	Pandemic Virus	12	12	12	9	↓
SR 12	Fragility and failure in the Social Care Market	16	16	16	16	↔
SR 13	Reputation	9	9	9	9	↔
SR 14	Climate Change (Carbon Neutral 2025)	9	9	6*	6	↔
SR 15	Economy Risk	9	9	9	9	↔

\*revised risk description from Q3.

- 6.2. Appendix A sets out the Strategic Risk Register in further detail, from the gross/unmanaged score, existing risk mitigation activity and the current net score as at Q4. Previous quarter net scores are also included.
- 6.3. Appendix B sets out the Strategic Risk Register from the net score to the target score, future planned mitigation activity and commentaries for the Q4 period.
- 6.4. Appendix C shows the Strategic Risk Register net scores for quarter 4 as a heat map, along with the scoring criteria for likelihood and impact.

#### Q4 2021/22 Updates on the Strategic Risk Register

- 6.5. The majority of risks on the strategic risk register have remained static in terms of risk scores during Q4 22/23.
- 6.6. Two risks on the Strategic Risk Register have decreased both gross and net scores during Q4: SR1C – Increased Demand for Children’s Services, and SR11 Pandemic Virus. One score, SR8b- Political Uncertainty has an increased net score.
- 6.7. The scoring for SR1C – Increased Demand for Children’s Services has changed from a gross score in Q3 of 16 to a gross score of 12 in Q4. For the net score, this has changed from 12 to 9 in Q4
- 6.8. These changes reflect adjustments to the likelihood of the gross and the net aspect of the scoring, because of the impact of risk mitigation activities in place:
  - delivering partnership strategies to ensure early support to families providing the right support at the right time,
  - working together with families so we achieve the best outcomes for children and young and prevent children and young people from experiencing greater intervention in their lives.
  - developing a new partnership strategy for Early Help and Prevention to continue to improve our support to children and families.
- 6.9. The scoring for SR11 – Pandemic Virus has changed from a gross score in Q3 of 16 to a gross score of 12 in Q4. For the net score, this has changed from 12 to 9 in Q4.
- 6.10. Again, these are reductions in the likelihood aspect of scoring, due to the rates of Covid-19 decreasing across the UK, and the impact of national vaccination programmes, the success of local partnership working, and the continuation of local track and trace support.

- 6.11.** The potential for further disruption from outbreaks, or further variants of Covid-19, or a new virus altogether remains, however, the global and local ability to respond to, and manage the impact of such an event is significantly improved. The ask upon local authorities to continue to both support recovery from the pandemic, and to support again in the event of further outbreak is also recognised in SR6 Organisational Capacity and Demand.
- 6.12.** The net score for SR8b – Political Uncertainty has increased from 8 to 12, as an increase to the likelihood aspect of the risk scoring. Whilst there remain several nationally directed policies and programmes, such as integrated care systems, the levelling up agenda, and devolution, which are already recognised for their potential impact on the direction of the Council's own objectives, other factors are emerging.
- 6.13.** The continuing conflict in Ukraine, and the impact this has on both the political environment and consequential inflationary issues in the economy increases the likelihood of the Council needing to revisit priorities and deliverability.

2021/22 Annual Review of Risk Management

- 6.14.** During 2021/22, the Strategic Risk Register was reviewed quarterly, and as reported to November 2021 Committee, several the Strategic Risks were re-focused, and descriptions were re-visited during Quarter 1 and Quarter 2 to ensure they reflected the current challenges and threats to objectives.
- 6.15.** Since this exercise, there have been no further risks escalated or introduced to the Strategic Risk Register, and no risks have been removed from it to be held on operational level registers.
- 6.16.** Additional interventions in the management of strategic risks may still result in static risk scores, as shown in some of the net scores in Table 1. By their complex nature, strategic risks will take time to respond to risk treatments and may require continual risk management activity to maintain the net score. The time it can take to mitigate a strategic risk to an acceptable level of net risk is likely to be considerable, particularly where the potential to manage the risk sits further outside the control of the Council.
- 6.17.** Increases in inflationary pressures due to construction material costs and supply chain issues have been noted in the commentary for capital projects, infrastructure investment and the economy throughout the year. The impact these have upon individual projects will be managed through existing management and governance mechanisms and reported to the relevant service committees through performance and finance updates.

- 6.18.** During 2021/22, the priority for the organisation in terms of risk management and business continuity was to continue to identify and manage Covid related risks to Council objectives and operational service delivery through the various phases of Covid response and restrictions. This was co-ordinated through CEmart, with support being provided by the attendance of the Head of Audit and Risk and Risk Manager.

#### Horizon Scanning

- 6.19.** Recently published predictions from a range of industry bodies have identified risks and challenges which the organisation has either already recognised on its Strategic Risk Register or will need to include proactively consider.
- 6.20.** These risks and challenges cover both direct impact on the organisation's achievement of objectives and operational service delivery, as well as the indirect impact on communities which will increase demand for support.
- 6.21.** Table 2 shows the predictions from Aon's "2021 Global Risk Management Survey" for the top ten risks facing organisations in 2024. This survey included private and public sector respondents.

Table 2

<b>Predicted top ten risks in 2024</b>		<b>Current CEC Strategic Risk Register</b>
1	Cyber-attacks/Data Breach	SR4 Information Security and Cyber Threat
2	Economic slowdown/slow recovery	SR15 Economy Risk
3	Commodity price risk/scarcity of materials	SR9 Capital Projects SR7 Council Funding SR3 Financial Management and Control
4	Business interruption	SR5 Business Continuity
5	Accelerated rates of change in market factors	Pace of change and demand features across <u>all</u> strategic risks
6	Increasing competition	SR7 Council Funding
7	Failure to innovate/meet customer needs	SR6 Organisational Capacity and Demand
8	Regulatory/legislative changes	SR8B Political Uncertainty Impact of regulatory and legislative changes will impact across <u>all</u> strategic risks
9	Pandemic risk/health crisis	SR11 Pandemic Virus
10	Cash flow/liquidity risk	SR7 Council Funding SR3 Financial Management and Control

- 6.22.** The Institute of Internal Audit "Risk in Focus 2022" survey also identified the top 5 risks for organisations presently, and the top 5 risks for organisations in three years' time. Tables 3 and 4 shows these top 5 risks

compared to the Council's current risk register. Again, the respondents to this survey were across the private and public sector.

Table 3

	<b>Top 5 Risks currently faced by the organisation</b>	<b>Current CEC Strategic Risk Register</b>
1	Cyber security and data security	SR4 Information Security and Cyber Threat
2	Changes in laws and regulations	SR8B Political Uncertainty Impact of regulatory and legislative changes will impact across <u>all</u> strategic risks
3	Digital disruption, new technology and AI	SR6 Organisational Capacity and Demand
4	Human capital, diversity and talent management	SR6 Organisational Capacity and Demand
5	Business continuity, crisis management and disaster response	SR5 Business Continuity

Table 4

	<b>Top 5 Risks facing the organisation in 2025</b>	<b>Current CEC Strategic Risk Register</b>
1	Cyber security and data security	SR4 Information Security and Cyber Threat
2	Digital disruption, new technology and AI	SR6 Organisational Capacity and Demand
3	Changes in laws and regulations	SR8B Political Uncertainty Impact of regulatory and legislative changes will impact across <u>all</u> strategic risks
4	Human capital, diversity and talent management	SR6 Organisational Capacity and Demand
5	Climate change and environmental sustainability	SR14 Climate Change (Carbon Neutral 2025)

- 6.23.** As demonstrated in the table above, all these predicted challenges from global risk trend forecasts already feature directly or indirectly within the current Strategic Risk Register, and it is positive that the organisation has already identified these as the key threats to the achievement of its objectives. As the nature of the challenges develops and changes, the organisation needs to ensure it understand these changes and can respond to manage them effectively.

#### 2022/23 Priorities for Risk Management

- 6.24.** The current Risk Management Framework covered 2020-2022 and is being updated to reflect the needs of risk management and risk reporting in the context of the Committee system, and to support greater cohesion in reporting risk alongside performance management and financial performance. This will include an assessment of the organisation's risk



maturity and risk management guidance and training materials will be updated as part of this.

- 6.25.** The completion of risk registers is undertaken as part of preparing service plans for 2022/23. These are being collated and the risk registers will be analysed to identify any trends, potential for compound/concurrent threats to be understood and to share ideas and practices within the organisation in terms of risk management and mitigation activity.

#### Business Continuity

- 6.26.** To minimise the impact on the delivery of services to residents wherever possible, services continue to review their business continuity plans in relation to staffing levels, and the potential of other events occurring as the pandemic responses continued. CEmart continued to receive updates on challenges to service delivery and business continuity challenges during the quarter.

## **7. Implications**

### **7.1. Legal**

- 7.1.1. There are no direct legal implications arising from the recommendations of this report. This report provides assurance to the Audit and Governance Committee that the Council achieves its strategic aims and operates its business, under general principles of good governance, that it identifies risks which threaten its ability to be legally compliant and operates within the confines of the legislative framework.

### **7.2. Finance**

- 7.2.1. There is no direct impact upon the MTFS from the recommendations of this update report. Costs relating to implementing risk treatment plans are included within service budgets. The need to provide financial security against the impact of risks is considered on a case-by-case basis and either included within specific budgets within the MTFS or considered under the overall assessment of the required level of General Reserves as part of the Reserves Strategy.

### **7.3. Policy**

- 7.3.1. Cheshire East Council has adopted the Risk Management Framework approved by Cabinet in June 2020. Risk management is integral to the overall management of the authority and, therefore, considerations regarding key policy implications and their effective implementation are considered within departmental risk registers and as part of the risk management framework.

### **7.4. Equality**

**7.4.1.** There are no direct implications arising from the recommendations of this update report.

**7.5. Human Resources**

**7.5.1.** There are no direct implications arising from the recommendations of this update report.

**7.6. Risk Management**

**7.6.1.** This report relates to overall risk management; the Audit and Governance Committee should be made aware of the most significant risks facing the Council and be assured that the risk management framework is operating effectively by continually reviewing the risk profile, identifying where strategic risks are emerging and assuring the Committee on how these are being managed.

**7.7. Rural Communities**

**7.7.1.** There are no direct implications arising from the recommendations of this update report.

**7.8. Children and Young People/Cared for Children**

**7.8.1.** There are no direct implications arising from the recommendations of this update report.

**7.9. Public Health**

**7.9.1.** There are no direct implications arising from the recommendations of this update report.

**7.10. Climate Change**

**7.10.1.** There are no direct implications arising from the recommendations of this update report.

<b>Access to Information</b>	
Contact Officer:	Josie Griffiths Head of Audit and Risk Management Email: <a href="mailto:Josie.Griffiths@cheshireeast.gov.uk">Josie.Griffiths@cheshireeast.gov.uk</a>
Appendices:	Strategic Risk Register (Appendix A)
Background Papers:	Risk Management Framework 2020-22 Risk Management Updates to Audit and Governance Committee 2021/22 2021 Global Risk Management Survey (AON) Risk in Focus 2022 (Institute of Internal Audit)

Risk Ref	Risk Description	Risk owner (CLT member)	Gross (unmanaged) score			Existing risk mitigation activity	Net (current) scores Quarter 4 2021/22		
			L	I	Total (L+I)		L	I	Total (L+I)
1A	<p><b>Increased demand for Adult Services</b></p> <p>That Cheshire East's local social, economic and demographic factors lead to an increase in the level of need and increased demand for adult services, resulting in the capacity of the Council's systems relevant to these areas being unable to continue to respond/ absorb the pressures presented, resulting in a possible lack of continuity of social workers/ increased market failure pertaining to a range of service providers, unmet need, potential safeguarding issues, and difficulty in achieving the Council's desired outcomes - that people live well and for longer</p>	Executive Director - Adults, Health and Integration	4	4	16	<ul style="list-style-type: none"> <li>• Adult Social Care (ASC)/Commissioning and Communities is engaged in the facilitation and forward planning of market engagement events, so to keep providers / people informed of preventative change as we progress with our People Live Well, for Longer Transformation Programme of Work.</li> <li>• ASC/Commissioning have in place a robust Contracts and Quality Monitoring Policy Framework – that makes clear – how quality is monitored in a person-centred way with a vast range of partners, when to activate a suspension protocol working with care quality commission and when/ how we are decommissioning services – keeping people at the centre of decision making regarding any service disruption or period of market failure.</li> <li>• ASC/Commissioning operate a monthly quality monitoring partnership forum that includes Police, Safeguarding, Care Quality Commission, ASC operations, Legal, CCG's and ASC lead commissioner – in the ongoing monitoring of quality and reporting and alerting of risk escalation that can be effectively managed – reports into relevant DMT's and Safeguarding Board.</li> <li>• ASC/Commissioning hold a provider risk register whereby we monitor and review risk pertaining to specific providers as part of our role working with Care Quality Commission pertaining to Market oversight.</li> <li>• ASC/Commissioning care sourcing/brokerage team support service and a local area co-ordination service- supporting vulnerable people to access wider community/ third sector services and wider more universal offers – diverting people away from care where appropriate.</li> <li>• ASC/Commissioning finance and planning resource allocation system to promote and engage more people to take direct payments and will enable people to identify against changing needs – an indicative robust budget thus reducing people reliance on traditional models of care.</li> <li>• ASC/Commissioning preventative policy framework that standardise of approach to prevention across adult social care “front door – whereby people will be directed away from traditional services towards a more empowering community solution, those accessing services will be fully assured working with providers – what our clear aim, vision and intentions are over the next three years.</li> <li>• ASC/Commissioning provider financial self-assessment accreditation tool – to assist with the monitoring and management of potential uplift and or additional funding. This will ensure that funding is robustly based on clear evidence, against demand / trends in market development and impact on provider/ council and people accessing the service.</li> <li>• ASC/Quarterly staff engagement groups are developed through leadership forums so to keep people informed and abreast of change as we progress to respond to demand and growth in the sector. Services operate regular staff conferences to address service specific developments and challenges.</li> <li>• ASC/Commissioning are involved in the North West regional and local programme of work pertaining to health and care staff recruitment, retention, and selection – resulting in a robust career path being developed with key partners and in being clear pertaining to local strategy.</li> <li>• ASC/Commissioning influencing and working with Cheshire CCG pertaining to development of ICS and ICP plans</li> <li>• ASC/Commissioning/communities have developed a robust and responsive policy</li> </ul>	4	4	16

Risk Ref	Risk Description	Risk owner (CLT member)	Gross (unmanaged) score			Existing risk mitigation activity	Net (current) scores Quarter 4 2021/22		
			L	I	Total (LxI)		L	I	Total (LxI)
						framework (People Helping People) with a vast range of third sector providers – thus reducing demand on adult social care. <ul style="list-style-type: none"> <li>To continue to develop with Children/families services joint commissioning and cross department work with adults – whereby risks can be better reduced together through a new joint commissioning management monthly working group.</li> <li>ASC/Commissioning monitor performance and demand against capacity to ensure service meets demand where possible, developing robust action plans for service/market failure.</li> <li>ASC performance monitoring reported on regular basis to CLT and Adult and Health Committee</li> <li>Additional risks escalated as appropriate.</li> </ul>			
<b>1C</b>	<b>Increased demand for Children's Services</b> Cheshire East's local social, economic and demographic factors lead to an increase in the level of need and increased demand for children's social care services, resulting in the capacity of the Council's systems relevant to these areas being unable to continue to respond/ absorb the pressures presented, resulting in a possible lack of continuity of social workers/ increased market failure pertaining to a range of service providers, unmet need, potential safeguarding issues, and difficulty in achieving the Council's desired outcomes - that children have the life skills and education they need to thrive.	Executive Director - Children's Services	3	4	12	<ul style="list-style-type: none"> <li>In 2021/22, the council committed to growth bids for Children's Social Care, and for increased capacity in the SEND service to meet the continuing demands of the service. Additional business cases have been included in the consultation on the Medium-Term Financial Strategy (MTFS) for further funding from 2022 onwards in these two areas to continue to meet the rising demand.</li> <li>We are closely monitoring the demand to services and the reasons that are driving demand so that we can be responsive and mitigate any risks to service delivery. Performance is monitored on a monthly basis by services. The Children and Families quarterly scorecard is reviewed at the Children and Families Committee and the Safeguarding Review meeting attended by the Chief Executive and Lead Member for Children and Families. The Safeguarding Review meeting includes discussion of workforce pressures and risks.</li> <li>The Early Help Brokerage Service was established in October 2015 to ensure demand for low level cases are appropriately allocated, reducing the demand on the Children's Social Care team in the front door.</li> <li>We have a range of support available to families through early help and prevention services, including council, partner, voluntary, community, faith sector and commissioned services. These services support families and help prevent needs from escalating and requiring higher level intervention. We are continuing to develop our service offer through developing our partnership working and joint commissioning.</li> <li>The Cheshire East Safeguarding Children's Partnership and the 0-25 SEND Partnership Board meet on a regular basis and is sighted on changes to demand for services so there can be a partnership approach to meeting children and young people's needs.</li> <li>A strategy is in place to ensure only the right children come into care; this approach will reduce demand to Children's Social Care services.</li> <li>Our partnership Neglect Strategy was launched in July 2021 to ensure children at risk of neglect are identified early, which will reduce higher cost demand at a later stage.</li> <li>A strategy is in place to manage increasing demand and reinforce SEN Support in settings through our 'Access to SEND Services' strategy.</li> <li>A robust governance structure is established for SEND. A new SEND strategy has been developed which will drive the continued improvement of support to children and young people with special educational needs and disabilities.</li> <li>We have supported children and young people who were most vulnerable through the pandemic through the Covid Grant Scheme/ Household Support Fund and the Holiday</li> </ul>	3	3	9

Risk Ref	Risk Description	Risk owner (CLT member)	Gross (unmanaged) score			Existing risk mitigation activity	Net (current) scores Quarter 4 2021/22		
			L	I	Total (L+I)		L	I	Total (L+I)
						Activity Fund. • We are developing our in-house placement options through our Bespoke Children's Homes and Mockingbird fostering model.			
<b>2</b>	<b><u>NHS Funding and Integrated Care System</u></b> Risk that due to the increasing financial deficit in the NHS, the five-year plan to reshape the delivery of NHS services across the wider region, may cause a reduction in Cheshire East Council shared service delivery and NHS service delivery, shifting costs and demand which places additional strain on Council resources resulting in unmet need and potential difficulty in achieving the Council's outcomes that people live well and for longer and local communities being strong and supportive.	Executive Director - Adults, Health and Integration	4	4	16	A Health and Wellbeing Board is established with representation from Clinical Commissioning Groups and the Council, which provides a forum for these challenges to be addressed at a strategic level. In addition, a Cheshire East Partnership Board has been created where system leaders are looking at integration and how to make the system more financially sustainable to achieve better outcomes for the residents of the Borough. Contract clauses are in place to address cessation of service and performance management arrangements should any failing performance materialise. Partnership working is in place and commissioning is informed through the JSNA. The H&WB is working with Cheshire Fire and Rescue, NHS and other partners on various schemes of intervention and prevention which are intended to decrease demand. The Adults, Health and Community Directorate has introduced a new model for helping people to retain control and maintain their independence and reduce additional strain on services. The Cheshire East Integrated Care Partnership has been in place since October 2020 and is developing implementation plans across a number of work streams designed to achieve quality improvement and financial efficiencies across the system. Progress on the ICP is reported to the Health and Wellbeing Board.	4	4	16
<b>3</b>	<b><u>Financial Management and Control</u></b> Ineffective financial management controls and failure to effectively manage change, limits the Council's financial resilience and lead to the Council failing to deliver the MTFS, undermine the Council's reserves strategy and results in pressure on ability to deliver services to residents.	Director of Finance and Customer Services	4	4	16	Financial planning arrangements include preparation by the finance team of detailed financial forecasts, based on the best available information and including prudent assumptions based on professional judgement and external advice. Balanced budget to put into effect the council's service plans for the forthcoming year, matched by available funding and including a risk assessment of the adequacy of general reserves MTFS sets out how the Council will deliver the Council's corporate plan including identification of budget gaps Use of a report format and report clearance process which ensures provision of relevant information on financial impact and risk exposure to the decision makers. Clear and effective communication of changes or updates to Finance and Contract Procedure Rules Sources of specialist advice and guidance Budget monitoring, comparing actual performance against approved budget, is undertaken throughout the financial year and reported to service committees. Risk-based approach to the use of reserves, identifying appropriate reserve levels and ensuring that reserves are not depleted without first identifying a strategy to restore them to risk-assessed levels during the MTFS period. Where a residual deficit is forecast, a number of actions will be explored including:- • use of any service or non-specific underspends to offset pressures elsewhere within the budget • accessing external funding ensuring compliance with any funding conditions • use of reserves • use of general balances Treasury management strategy to manage the council's cash flows, including an	3	3	9

Risk Ref	Risk Description	Risk owner (CLT member)	Gross (unmanaged) score			Existing risk mitigation activity	Net (current) scores Quarter 4 2021/22		
			L	I	Total (LxI)		L	I	Total (LxI)
						investment strategy focused on the security of principal sums and a borrowing strategy to manage interest payable and other charges A capital strategy that prioritises capital investment programmes, identifies the financial impact of investment in schemes and limits the amount of unsupported borrowing to be taken.			
4	<b>Information Security and Cyber Threat:</b> As the Council continues to move towards using new technology systems to reduce costs and fulfil communication, accessibility, and transaction requirements, it becomes increasingly vulnerable to a security breach, either maliciously or inadvertently from within the Council or from external attacks by cyber-criminals. This could result in many negative impacts, such as distress to individuals, legal, financial, and reputational damage to the Council, in addition to the possible penetration and crippling of the Council's IT systems preventing it from delivering its Corporate Outcomes.	Executive Director - Corporate Services	4	4	16	The Chief Information Officer is an advocate of and reports on Information Risk to the Corporate Leadership Team and the Audit and Governance Committee and makes the Annual Statement of Internal Control of Information Risk. The Council has several Information and Data Security policies which are published on the Centranet and help to protect from the Council from inappropriate and unauthorised access and communicates what to do in the case of an incident. Progress on Information Risk and Information Security is monitored through the Strategic Information Governance Group (SIGG), Operational Information Governance Group (IGG) and the Virtual IGG Task and Finish Group. The Council has an Incident Reporting process which has been communicated to staff, all incidents are scored and assessed by IGG to ensure that the breaches are minimised, and future breaches are reduced. The Council complies with the Public Services Network PSN Code of Connection, NHS Data Security and Protection Toolkit, DWP's MOU and NHS Digital controls, work continues with the consolidation and enhancement of elements of the security estate to meet the ever-developing threat profiles. This includes third party IT hardware and software tests undertaken by accredited security vendors, these validate that the network and hardware are secure and robust, if any vulnerabilities are found then a mitigation plan is drawn up and actioned. The Council has an Information Asset Register which is reviewed on an annual basis and has been published on the open data portal. There is also an Information Assurance Data Management (IADM) programme of activity to increase awareness and maturity of information assurance and governance across the Council. The programme is tasked with guiding the organisation to manage its information in a compliant and efficient way. Data Classification has been rolled out to the organisation; this allows the categorisation of information so that appropriate controls can be employed to protect the information. The Council provides security and compliance e-learning courses (which are mandatory for all employees) on the Learning Lounge and Metacompliance portal. This includes several modules of Data handling, Security, and Information Assurance. Controls are in place to restrict access to the data centres and network equipment and risk assessments of existing systems and networks are on-going. The Council has a Data Protection Officer who assists in ensuring compliance with GDPR and to specify the procedures to be adopted. The Council's ICT Services have a strategic direction to move to a "Cloud First" principle, whilst this enables an evergreen environment which is always up to date, additional controls are needed to prevent compromise or inappropriate use and access. This includes contract compliance and monitoring to ensure ongoing protection of information. An assessment was completed using the Council's insurance broker to understand	4	3	12



Risk Ref	Risk Description	Risk owner (CLT member)	Gross (unmanaged) score			Existing risk mitigation activity	Net (current) scores Quarter 4 2021/22		
			L	I	Total (LxI)		L	I	Total (LxI)
						current and future risks and whether any risks needed treating or could be offset through insurance cover.			
<b>5</b>	<b><u>Business Continuity</u></b> Risk that an internal or external incident occurs which renders the Council unable to utilise part or all of its infrastructure and resources (such as buildings, IT systems, and staff etc.) such that the Council is unable to deliver some, or in extreme cases all of its services and putting residents at risk for a period of time and resulting in a reduced achievement of Corporate Plan outcomes over the longer period.	Executive Director - Corporate Services	3	4	12	Implementation of Clearview; Business Continuity Software for business continuity planning; Clearview provides the process in a easily understandable format to identify critical and serious priority activities. Executive Directors, Directors and Heads of Service have received training in developing Business continuity plans Awareness raising campaign by undertaking a Cyber Attack Awareness Exercise and fire in a public building (in addition to emergency planning colleagues and also included a community flooding and a fire scenario which had business continuity implications and the council's response) with colleagues from across various areas of the Council The Clearview system enabled staff to review and revise their BC Plans for both Departmental and Service Level Plans with relevant templates for appendices (in line with the structure formats) All BC plans were uploaded to the system by March 2020 and have been asked to review in light of second wave COVID. High level course on Business Continuity Management has been added to the Council's Learning Lounge. ICT Shared Service also have a Crisis Recovery Plan that has been updated to take account of lessons learned because of ICT outage incidents. This Crisis recovery plan overview contains key information for the ICT Shared Service disaster recovery A corporate business continuity plan has been developed and is contained within Clearview.	3	3	9
<b>6</b>	<b><u>Organisational Capacity and Demand</u></b> Local demographic and external factors (including COVID and EU Exit) lead to increasing and changing demands on services. This, combined with ongoing financial pressures, an ageing workforce, staff turnover and skills shortages in key areas of the workforce, result in insufficient capacity and an inability to retain or attract staff. This results in a detrimental impact upon physical, emotional and mental wellbeing of staff, and impact negatively on the Council's ability to deliver all of its intended objectives and outcomes.	Executive Director - Corporate Services	4	4	16	In terms of the demand, work planning in advance has been improved. Significant increases in work pressures are being raised in advance, so that additional resource can be sourced for commissioned work. Improved HR data is being used to identify potential issues and service workforce plans developed to mitigate. The apprenticeship levy and talent management and succession planning frameworks are under development to help mitigate. Ongoing work to reduce work on reliance on agency staff, for a more stable permanent workforce base and reduced costs. A range of comprehensive measures are in place to support staff wellbeing and resilience. Labour markets are now seeing significant movement due to the impacts of Covid19, including the end of the furlough scheme. Locally, there are particular pressures, for example, on the care sector, with some neighbouring authorities are offering higher salaries which impacts on staff retention. Agency staff are not always available to fill the roles. Additional work programmes and recruitment campaigns are also in place for areas such as Care4CE. Redeployment of staff is being considered where services are stretched and agency staff are not available. The council is moving to agile working as a permanent feature of future ways of working, which may attract a wider pool of candidates. Alongside service workforce plans, a recruitment and retention strategy is under development to ensure the Council addresses identified shortfalls with agreed actions and service specific solutions The Head of HR considers that the measures reduce the likelihood but not the impact.	3	4	12

Risk Ref	Risk Description	Risk owner (CLT member)	Gross (unmanaged) score			Existing risk mitigation activity	Net (current) scores Quarter 4 2021/22		
			L	I	Total (L+I)		L	I	Total (L+I)
<b>7</b>	<b>Council Funding</b> Significant detriment to the Council's funding streams as a result of changes to grant funding, reductions in the collection of council tax, business rates or fees and charges and changes in the local economic circumstances increase pressure on the Council's financial position and ability to deliver corporate priorities within the planned medium term financial strategy.	Director of Finance and Customer Services	4	4	16	Financial planning arrangements include preparation by the finance team of detailed financial forecasts, based on the best available information and including prudent assumptions based on professional judgement and external advice Balanced budget to put into effect the council's service plans for the forthcoming year, matched by available funding and including a risk assessment of the adequacy of general reserves Brighter Futures Commercial workstream addressing opportunities to increase income for the Council Monitoring of grant funding formula	3	4	12
<b>8a</b>	<b>Governance and Decision Making</b> Failure to maintain effective corporate governance could result in poor decision-making, non-compliance and breach of legislation, leading to regulatory intervention and significant cost in financial terms and to the reputation of the Council, and failure to take decisions which deliver the objectives of the Corporate Plan.	Executive Director - Corporate Services	4	4	16	Council's Constitution covers decision making processes, including finance and contract procedure rules. Following the change to Committee system, mechanisms are in place to capture learning from the use of the committee system from Members (Constitution Working Group) and Officers (Brighter Futures Transformation Governance Workstream). Constitution is a publicly available document; guidance on the use of the decision-making processes is provided by enabling services including Legal, Finance, Democratic Services, and Audit and Risk. Reports to Committees are developed and reviewed by senior officers and enabler sign off, briefings are arranged with Committee Members to address any further knowledge requirements ahead of the relevant meeting. Schemes of delegation; local and financial are in place to provide clarity on responsibilities ensure separation of duties is in place where required and minimise the risk of management override. Assurance mechanisms on the organisations' compliance with its decision-making processes are provided through the external audit (Statement of Accounts) and the work of the internal audit team. There are other external inspections, such as Ofsted, which may examine elements of our decision-making processes through their work, although this is not usually the primary focus. The organisation publishes an Annual Governance Statement identifying significant governance issues which have occurred, any known areas which may cause issues if not managed effectively and updates on issues previously identified.	3	3	9
<b>8b</b>	<b>Political Uncertainty</b> Uncertainty around future local and national political policy and administration could result in challenges to, or failure to take the decisions required to facilitate delivery of the Council's Corporate Plan, leading to unnecessary increases in resources used in the decision-making process and dissatisfaction from residents.	Corporate Leadership Team	3	4	12	Engagement with political administration of CEC Engagement with group leaders of CEC parties Training and briefing to CEC members	3	4	12



Risk Ref	Risk Description	Risk owner (CLT member)	Gross (unmanaged) score			Existing risk mitigation activity	Net (current) scores Quarter 4 2021/22		
			L	I	Total (LxI)		L	I	Total (LxI)
<b>9</b>	<b>Capital projects</b> Risk that the Council's major capital projects are insufficiently managed to ensure that they are delivered on time, on budget and at the required quality level.	Executive Director - Place	4	4	16	<ul style="list-style-type: none"> <li>The Capital Strategy and overall Capital Programme is presented annually as part of the Medium-Term Financial Strategy at full Council.</li> <li>New projects and schemes are subject to the approval of detailed business cases in accordance with the Finance Procedure Rules</li> <li>The Assets Board provides strategic oversight of the Council's land and property assets including recommendations and reports on acquisition, disposal and development.</li> <li>The Capital Programme Board undertakes detailed appraisals of projects and business cases; undertakes gateway reviews and risk management reviews of major capital projects; and receives post project completion reports to assess benefit realisation and lessons learnt.</li> <li>Appropriate and proportionate governance has been established to oversee project delivery, including risk registers. This includes project boards to manage individual projects and thematic programme boards to provide additional strategic oversight and manage interdependencies, e.g. Carbon Neutral Programme Board, Leisure Investment programme Board, Place Board.</li> <li>The Place Board provides strategic oversight of all the major Crewe-centric and Macclesfield-centric projects, including HS2 and strategic housing sites, to ensure individual projects are fully aligned to the overarching vision and delivery plan for each town.</li> <li>Financial monitoring undertaken quarterly, with summary data reported to Finance Sub-Committee and appropriate service committee twice a year</li> <li>High level progress updates are reported to the appropriate service committee twice a year. More detailed progress reports on individual projects or programmes are provided on a periodic basis.</li> <li>Regular 121s between Executive Director and Directors which includes updates on major projects</li> </ul>	2	3	6
<b>10</b>	<b>Infrastructure Investment (opportunity)</b> Securing the required investment to support our major infrastructure and development priorities in Place, particularly in relation to HS2 and delivery of the Crewe Hub and noting the inflationary pressures across all aspects of project delivery.	Executive Director - Place	4	4	16	<ul style="list-style-type: none"> <li>This risk will be reviewed by the Place Board (chaired by the Executive Director of Place) and the Business Case and Investment Integration Board (chaired by the Director of Finance) on a monthly basis and the chairs inform CLT accordingly.</li> <li>Day to day management of the actions in place to reduce the risk is a combination of the BCII: Business Case and Investment Integration, the Programme Director and the Programme Manager. The controls above will be used to monitor the risk.</li> <li>There have been no control failures to date. In fact, the controls in place today are probably stronger than at any point in achieving the objective. This is commensurate to the closing window of opportunity and the increase in work required by the Council to turn the outputs of the consultants Business Case work. Future issues may arise if the dedicated resource currently requested is not quickly put in place to release the efficiencies of working a close dedicated team brings.</li> <li>Ultimately, while the Council can control the technical evidence, business case formation and the technical level negotiation with Government Departments, the risk is being impacted on by recent Government administration changes and the resultant changes in Government policy.</li> <li>Value engineering of design and development of projects and Early Contractor Involvement where appropriate.</li> <li>Liaison with the contracting industry to identify the most efficient design solutions.</li> </ul>	3	4	12

Risk Ref	Risk Description	Risk owner (CLT member)	Gross (unmanaged) score			Existing risk mitigation activity	Net (current) scores Quarter 4 2021/22		
			L	I	Total (L+I)		L	I	Total (L+I)
						<ul style="list-style-type: none"> <li>• Constant review and effective management arrangements of capital projects and programme budgets.</li> <li>• Managing outward facing expectations on the scheme</li> <li>• Ongoing cost review based on latest construction inflation forecasts</li> </ul>			
<b>11</b>	<b>Pandemic Virus</b> Ongoing risk of genetic shift resulting in rapidly spreading strain of influenza and other diseases previously unseen in humans for which no preventative treatment is available. In addition to the human health risks pandemic flu poses a risk to healthcare capacity and CEC business continuity.	Executive Director - Adults, Health and Integration	3	4	12	Limited National Government mandatory and advisory measures. National Vaccine roll out Sub-regional collaboration co-ordinated by the CHaMPS Public Health Collaborative Cheshire and Warrington Local Resilience Forum managed partnership working. Cheshire East Emergency Planning activity Advice and guidance to schools, businesses and residents Track and Trace Team activity / Swab Squad/Contract Tracing Team Cheshire East organisational activity Ongoing working from home Local Track and Trace Hub established Delivery of government mandated actions and activity (self-isolation payments, support for care providers etc) Supporting NHS roll out of Covid 19 vaccination programme Initiating flu vaccination programme for all staff and communications supporting public vaccinations	3	3	9
<b>12</b>	<b>Fragility and failure in the social care market</b> Increased pressure within the social care market, rising costs, increasing complex needs and funding pressures, which have been exasperated by Covid 19 increases the likelihood of multiple provider failure and market collapse.	Executive Director - Adults, Health and Integration	4	4	16	<ul style="list-style-type: none"> <li>• ASC/Commissioning comply with the Care Act 2014, in holding a provider risk register whereby we monitor and review risk pertaining to specific providers as part of our role working with Care Quality Commissioning pertaining to Market oversight.</li> <li>• ASC/Commissioning have in place a robust Care Act compliant – Contracts and Quality Monitoring Policy Framework – that makes clear – how quality is monitored in a person-centred way with a vast range of partners, when to activate a suspension protocol working with care quality commission and when/ how we are decommissioning services – keeping people at the centre of decision making regarding any service disruption or period of market failure.</li> <li>• ASC/Commissioning operate a monthly quality monitoring partnership forum that includes Police, Safeguarding, Care Quality Commission, ASC operations, Legal, CCG's and ASC lead commissioner – in the ongoing monitoring of quality and reporting and alerting of risk escalation that can be effectively managed – reports into relevant DMT's and Safeguarding Board.</li> <li>• ASC/Commissioning have a care sourcing/brokerage team support service and a local area co-ordination service- supporting vulnerable people to access wider community/ third sector services and wider more universal offers – diverting people away from care where appropriate utilising People Healing People services</li> <li>• ASC/Commissioning provider financial self-assessment accreditation tool – to assist with the monitoring and management of potential uplift and or additional funding. This will ensure that funding is robustly based on clear evidence, against demand / trends in market development and impact on provider/ council and people accessing the service. For providers at risk we are offering an open book accounting exercise to ascertain the level of risk within that service.</li> <li>• ASC/Quarterly staff engagement groups are developed through leadership forums so to keep people informed and abreast of change as we progress in order to respond to</li> </ul>	4	4	16

Risk Ref	Risk Description	Risk owner (CLT member)	Gross (unmanaged) score			Existing risk mitigation activity	Net (current) scores Quarter 4 2021/22		
			L	I	Total (LxI)		L	I	Total (LxI)
						<p>demand and growth in the sector.</p> <ul style="list-style-type: none"> <li>• ASC/Commissioning are influencing and working with Cheshire CCG pertaining to local ICS and ICP plans regarding the overall reduction in demand and systems redesign work supporting an improved community offer and redesigned front door.</li> <li>• ASC/Commissioning with communities are developing a robust and responsive policy framework (People Helping People) with a vast range of third sector providers – thus reducing demand on adult social care.</li> <li>• ASC/Commissioning working with partners across the North west via ADASS to address the future market capacity and workforce issues.</li> <li>• The Council is working with skills for care to see what support it can give to the market in terms of recruitment and retention and build knowledge.</li> <li>• As part of the contract management and quality assurance processes we check each provider's Business Continuity plan for robustness and make recommendations for improvement if required.</li> <li>• The Council has commissioned a new offer for informal and formal carers to ensure the right level of support is received for them to maintain their caring duties.</li> </ul>			
<b>13</b>	<p><b>Reputation</b></p> <p>That consideration is not given, and management action is not taken, to effectively manage the reputation of the Council, leading to a loss of public confidence, threatening the stability of the Council and our ability to meet the corporate priorities.</p>	Chief Executive	4	4	16	<ul style="list-style-type: none"> <li>• Effective monitoring and reporting of organisational reputation and sentiment.</li> <li>• Weekly reputation reporting to senior managers</li> <li>• Monitoring of social and traditional media</li> <li>• Communications and media function advised at an early stage of all future demand and emerging issues to enable effective planning</li> <li>• Providing a 24/7 emergency communications on call function</li> <li>• Communications strategies for key projects and issues developed agreed and reviewed with senior stakeholders and decision makers</li> <li>• Comms programme planned and reviewed over short-term (daily) and long-term (monthly / annually)</li> <li>• Review communications business continuity, priorities and emergency / crisis comms protocols and plans</li> <li>• Media protocol and approvals process</li> <li>• Media training programme for key spokespersons</li> <li>• Senior member overview of COVID-specific communications activity through Local Outbreak Engagement Board</li> <li>• Weekly COVID-specific comms activity reporting and planning as part of CEMART</li> <li>• Weekly meetings with comms leads from public sector partner organisations to collaborate, share plans and intelligence</li> <li>• Ensure that information about the Council, its services and how to access them is easily available in a range of formats for a wide range of audiences</li> <li>• Ensure that consultation is undertaken when any proposals are still at a formative stage</li> <li>• Consultation must give sufficient reasons for any proposal or change to permit stakeholders to undertake intelligent consideration and response to the options</li> <li>• Ensure consultation and engagement activity informs our evidence-based decision-making approach and that adequate time is given between the end of a consultation to allow for consideration of and where required, a response to, the output of a consultation or engagement</li> <li>• Ensure that Equality Impact Assessments (EIA) are signed off before any consultation</li> </ul>	3	3	9

Risk Ref	Risk Description	Risk owner (CLT member)	Gross (unmanaged) score			Existing risk mitigation activity	Net (current) scores Quarter 4 2021/22		
			L	I	Total (LxI)		L	I	Total (LxI)
						can begin. • When communicating about decisions, make it clear HOW consultation and engagement activity, EIA and other intelligence has been conscientiously taken into account when finalising the decision			
<b>14</b>	<b><u>Climate Change (2025)</u></b> Failure to achieve Carbon Neutral status for the Council by the 2025 milestone target as a result of ineffective planning and delivery of actions, will result in non-delivery of a key priority in the Council's Corporate Plan. It will also contribute to climate change temperature rise and severe weather events which could have an impact on public health and safety. It could also have financial implications with increased need for adaptation of key infrastructure for severe weather events across the borough.	Executive Director - Place	3	4	12	• Risk is reviewed as part of the brighter futures transformation projects board, operational board and member steering group. • Carbon Neutral programme established with Programme Board reviewing progress and risks monthly • Member Advisory group overseeing its delivery • Annual update on progress reported to relevant committee • Climate change is a key consideration as part of our statutory planning duties as an authority and within the development of local planning policy • Planned natural offset set at 10% more than required to reduce risk of non-delivery in any one project area.	3	2	6
<b>15</b>	<b><u>Economy Risk</u></b> The combined external national economic shocks of EU transition and COVID - 19 will have a severe detrimental impact on Cheshire East economy resulting in a protracted reduction in economic growth. This recession is expected to increase the number of local business failures resulting in a loss of business, employment and consumer confidence in Cheshire East; and severe impacts on the Councils income and exert pressure on its revenue and capital programmes.	Executive Director - Place	4	4	16	• Business Support and Grants • Economic Recovery • Meet the buyer event for HS2 • Employment support • Business forum to engage and plan future support • Investment plans to support regeneration and development • Place marketing and inward investment	3	3	9

Risk Ref	Risk Description	Net (current) scores Quarter 4 2021/22			Further planned risk mitigation activity	Target risk score			Q4 Comments
		L	I	Total (LxI)		L	I	Total (LxI)	
SR1A	Increased demand for Adult Services	4	4	16	<ul style="list-style-type: none"> <li>• ASC/ Commissioning and Communities, together with Public Health one Directorate continuing to work jointly to respond to challenges pertaining to prevention, health inequalities and our workforce.</li> <li>• ASC/Commissioning and Communities developed a Standard Set of Fit for the Future Contracts – that set out specific measurable outcomes pertaining to each service area in driving prevention and key performance indicators that test the providers ability to retain a viable and sustainable business in responding to a population of changing need – higher levels of resident satisfaction and improved control.</li> <li>• Continue to monitor and review preventative and support service activity.</li> <li>• Continue to develop improved monitoring of people's outcomes.</li> <li>• Improved utilisation of public health JSNA and wider regional data sets informing future commissioning plans.</li> <li>• Develop engagement with community groups and 3rd sector.</li> <li>• strength liquid logic and controcc solutions to better map trend and demand.</li> <li>• To monitor and review thresholds and gatekeeping processes.</li> <li>• Review and strengthen partnership working with wider agencies.</li> <li>• Restructured teams to ensure better integration with key partners.</li> <li>• Better data intelligence to understand where and what kind of service demand needs are, in order to commission appropriately and effectively.</li> <li>• Continue to engage with leaders across teams – informing and influencing change.</li> <li>• Continue with Connecting Leaders – through strong forward thinking visible leadership.</li> <li>• Continued engagement with people who access services and the involvement of Healthwatch and independent advocacy.</li> <li>• Proactive engagement with the new Integrated Care Partnership (includes health partners).</li> <li>• Ongoing response measures to COVID 19 pandemic (see SR11).</li> <li>• Maintaining Business Continuity across inhouse and external providers.</li> </ul>	3	3	9	No significant change to Q3 comments; we have seen an unprecedented demand on adult social care services. Demand has increased from our local hospitals and individuals needing mental health support. In addition to this the Council has also seen a significant rise in safeguarding concerns. This is coupled with staff absences and huge difficulties in recruiting and retaining staff. Despite the mitigations in place, business continuity plans have been refreshed and support being given to staff to assist in managing the situation.
SR 1C	Increased demand for Children's Services	3	3	9	<p>The Council is considering a further children's social care growth bid for 2022/23.</p> <p>The Council is considering a further growth bid for SEND and Educational Psychology for 2022/23.</p> <p>Continue to deliver our Sustainable Futures Strategy and improve the quality of social work practice.</p> <p>We are exploring expanding our in-house residential provision and fostering sufficiency, learning from North Yorkshire's 'No Wrong Door' model.</p> <p>Continuing to support good quality early help and prevention services.</p> <p>Continuing to support vulnerable children and young people through the Household Support Fund and the Holiday Activity Fund.</p> <p>Deliver the SEND Strategy and Access to SEND Services Strategy to ensure children and young people with SEND get the right support at the right time.</p> <p>Continue to develop Bespoke Children's Homes and Mockingbird fostering model.</p>	3	3	9	Business cases for Children's Social Care and SEND Services were agreed as part of the MTFS for 2022-2026 to ensure services can continue to meet increased activity and demand. We are continuing to deliver our partnership strategies to ensure that we support families early, providing the right support at the right time, and that we work together with families so we achieve the best outcomes for children and young people in order to mitigate this risk and prevent children and young people from experiencing greater intervention in their lives. We are currently developing a new partnership strategy for Early Help and Prevention in order to continue to improve our support to children and families.

Risk Ref	Risk Description	Net (current) scores Quarter 4 2021/22			Further planned risk mitigation activity	Target risk score			Q4 Comments
		L	I	Total (LxI)		L	I	Total (LxI)	
SR 2	NHS Funding and Integrated Care System.	4	4	16	The Cheshire East Partnership has published a detailed implementation Plan (The Five-Year Plan and Technical Appendix, October 2019) with the intention of accelerating the work to introduce a new model of care and to establish an Integrated Care Partnership. To continue to be a key player in the development of the integrated care system at a regional and local level. Deliver the SEND Strategy and Access to SEND Services Strategy to ensure children and young people with SEND get the right support at the right time. Continue to develop Bespoke Children's Homes and Mockingbird fostering model.	3	4	12	Proposals for a new Governance arrangement and section 75 are being prepared for May 22 Council.
SR 3	Financial Management and Control	3	3	9	Training and briefing to Councillors. Education and training on Finance and Contract Procedure rules for Officers and Councillors. Roll-out of Unit4 self-serve requirements. Action Plan on adherence to FM Code.	2	3	6	MTFS has been subject to external / internal consultation following development via CLT. MTFS and in-year position also subject to oversight and scrutiny via Committees. MTFS balanced for further 4yrs including impact of government spending review. 2021/22 budget close to balanced, with deficit manageable via use of MTFS earmarked reserve in accordance with strategy. FM Code gap analysis completed, CFO governance workstream working on action plan. Unit4 go-live 2 completed. Finance Team completed training and started roll-out of forecasting requirements. Unqualified opinion delayed provided for Statement of Accounts, due to national infrastructure valuation issue, not related to CEC. No material adjustments required in findings to date.
SR 4	Information Security and Cyber Threat	4	3	12	Review policies and guidance materials to strengthen advice to staff on how to manage various information types. Continue with education and communication programme. Update to CLT on cyber security and the recommendation of the insurance assessment. Production of Business Case for Security and Compliance to enhance the security estate to meet new and emerging threats. Production of Business Case for IADM, to increase the maturity of Information Assurance, and to increase the value of the corporate assets. Undertake regular compliance reviews. Simplify and consolidate the ICT infrastructure. Reduction of the information storage, removal of duplicates information and validate that the asset register is being adhered to. Roll-out the revised/ updated e-learning. Enhancement of the Data Classification and technical controls to further protect information. Enable Data Quality consistency across multiple service areas.	4	3	12	NCSC intelligence indicates that the Russian government is exploring options for potential cyber-attacks, this activity may occur as a response to the unprecedented economic costs imposed on Russia as well as material support provided by the UK, allies and partners to Ukraine. They are not aware of any specific, targeted cyber threats to UK organisations or citizens as a result of the Russian invasion of Ukraine but are encouraging organisations & citizens to remain vigilant as this could change at short notice. To this effect the net risk rating remains at 12 due to the major impact on the corporate plan should a vulnerability be exposed.



Risk Ref	Risk Description	Net (current) scores Quarter 4 2021/22			Further planned risk mitigation activity	Target risk score			Q4 Comments
		L	I	Total (LxI)		L	I	Total (LxI)	
SR 5	Business Continuity	3	3	9	Co-ordinate a refresh of BC plans with specific focus on ICT systems. Review and refresh of the Business Continuity Framework. Development of training materials on Learning Lounge to support staff training and awareness. Introduce moderation of BC plans across a working group for internal challenge and support. Assessment of BC software with ongoing organisational needs. Work with Emergency Planning to hold regular scenario testing.	2	3	6	Oversight and monitoring of business continuity challenges through Q4 was led through CEmart. As the organisation adjusts to "Living with Covid", services will need to reflect on the plans and ensure that hybrid working is reflected in plans.
SR 6	Organisational Capacity and Demand	3	4	12	Revised Council wide Workforce Strategy and Directorate /Service Workforce Plans. Equality, Diversity and Inclusion Strategy.	3	4	12	In November 2021, Corporate Policy Committee agreed a new Workforce Strategy 2021 -2025 which addressed the key workforce priorities for the Council under four strategic themes: -Delivering Our Future; -Living our Values and Delivering our Employee Deal; -Inclusive Workforce – Ensuring Everyone has a Voice -Empowering Our Workforce  Service Workforce Plans are being refreshed as part of the business planning process. Recruitment and retention remain a key focus for the forthcoming year across all services. A comprehensive programme of work is being developed to ensure that both strategic and service level activity is progressed to ensure that we maximise all opportunities, mitigate risk and make Cheshire East Council the employer of choice.  Hybrid working continues to be embedded across the Council supporting recruitment and retention and making the Council an attractive employer for external candidates, while supporting many of our staff to experience an enhanced work-life balance.  The overall net risk rating is 12 and remains high.
SR 7	Council Funding	3	4	12	Engage with consultation on changes to local government financing.	2	3	6	MTFS assumptions reviewed via Finance Sub-Committee. MTFS published following autumn statement, but prior to detailed Local Government Settlement. Assumptions gave limited benefit from settlement, to allow flexibility within the consultation period. Settlement provided only single year clarity, however risk from reduced levels of local taxes reduced as collection rates and levels of government funded reductions have stabilised the forecasts. Implementation of improved Council Tax Support scheme, EA scheme consultation and new business grants will help with impact on collection rates too.
SR 8A	Governance and Decision Making	3	3	9	Further work of the BFT Governance Workstream projects – Decision Making, Governance and Financial Codes and Policy and Performance. Constitution update (April 2022, annual review thereafter). Decision making records. Reports and delegations - reviewed after each Committee cycle.	2	2	4	The change in governance has delivered a legally compliant budget and there have been no challenges to decision making in the first year. The governance Brighter Futures project has concluded and is transitioning to business as usual, and the governance system is moving from major change/implementation to incremental improvement. Further

Risk Ref	Risk Description	Net (current) scores Quarter 4 2021/22			Further planned risk mitigation activity	Target risk score			Q4 Comments
		L	I	Total (LxI)		L	I	Total (LxI)	
									consideration on operational learning from officers will be incorporated into future improvements.  The alignment of governance arrangements to the achievement of the corporate plan is now required; this will be achieved through a program of strategy mapping and alignment against the corporate plan, and reinforced through alignment in the reporting of performance, risk and finance.
SR 8B	Political Uncertainty	3	4	12	System for briefing and information exchange on white papers, levelling up, ICS and regional solutions. Preparation for Elections 2023 and delivery of Corporate Plan Reprioritisation/new plan after elections. Service Committee Support & Briefings.	2	3	6	The delivery of national policies, integrated care systems, levelling up, and devolution remain an unchanged risk. The conflict in Ukraine and impact on political environment and consequential inflationary issues creates a risk of revisiting of political priorities and deliverability. Increased net likelihood score changed due to these factors, and the increased proximity to local elections in 2023.
SR 9	Capital projects	2	3	6	A new module within the Unit4 ERP system will improve financial monitoring to provide more regular information on actual and forecast spend.	2	3	6	<ul style="list-style-type: none"> <li>The existing controls for effective governance and management of major capital projects remain in place.</li> <li>Each major capital scheme has its own project or programme governance in place.</li> <li>Additional governance mechanisms include Assets Board and Place Board providing oversight on thematic programmes.</li> </ul>
SR 10	Infrastructure Investment (opportunity)	3	4	12	No further planned mitigation activity.	4	4	16	Q3 Comments still apply  The Council continues to work collaboratively with stakeholders and partners to manage the above risks. The Council will explore Government funding opportunities to bring forward key interventions (such as the LUF) and utilizing work to date. Recent engagements with Government ministers have been positive and an opportunity to work with Infrastructure and Projects Authority to move the work forward has arisen.
SR 11	Pandemic Virus	3	3	9	Development of regional 'business as usual' approach for Cheshire and Merseyside. Horizon scanning to understand long-term management of Covid-19.	2	3	6	There is at present no means of removing the COVID-19 virus from the population or its associated risks, and changes in national policy have removed most control measures that had previously been in place. Managing the spread and mitigating against the impact is what we must continue to work on in partnership with all those living and working in Cheshire East (in collaboration with partners across the sub-region and Cheshire and Merseyside). To achieve this we will maintain the TTCE Programme until at least October 2022 and support partners across the health economy to deliver both the current vaccination programme and the booster programme to all eligible residents.  Rates of Covid-19 are decreasing, but as test and trace functions have been largely de-mobilised, and data sources reduced, the



Risk Ref	Risk Description	Net (current) scores Quarter 4 2021/22			Further planned risk mitigation activity	Target risk score			Q4 Comments
		L	I	Total (LxI)		L	I	Total (LxI)	
									<p>current case rates are not likely to be accurate. Additionally other illnesses such as RSV and TB have been seen to be rising, these rises are due to increased population susceptibility and are likely to put further pressure on primary and secondary care. The control measures for all respiratory and gastrointestinal infections remain the same as those for Covid-19. Local Authorities are being requested to take on more responsibilities and there is a lack of clarity on the role of Local Authorities in managing Covid-19 long-term. There will be additional financial pressures and workload pressures on organisations and staff across health and social care as a result.</p> <p>The core risk from Covid-19 has reduced due to the levels of vaccination, as well as the number of people who have been exposed to the virus. The risk has reduced in terms of deaths and serious illness, however the risk associated with a major disruption to business services remains. If large numbers of people are infected and are ill at the same time business continuity will likely be impacted for some time.</p> <p>There remains a risk from a new Variant. We have seen several Variants over the course of the 2-years of the Pandemic and it is possible that a different virus, whether a Coronavirus or not could emerge. While this is still a significant risk, the mitigation is that the world has learned a great deal about the measures to take and vaccine technology has improved greatly.</p> <p>The vaccination programme continues its roll out across the borough. Cheshire East continues to have the highest overall rates for Cheshire and Merseyside and in the country. The Spring Booster Campaign is underway for people aged over 75 years old and residents of care homes. Uptake is good though outbreaks within the care home sector has delayed the roll out of the programme in some homes. In addition, the primary vaccination programme for children aged 5-11 years old has commenced thereby extending the programme to whole population aged over 5 years old. Whilst it is likely that an Autumn booster programme will be required. Though the NHS will be responsible for the delivery of the programme, the local authority will be asked for its assistance to ensure its success, particularly to enable our most disadvantaged communities.</p> <p>The implications for recovery include a significant impact on mental health for a range of reasons with concurrent needs for increased access to services (including substance misuse</p>

Risk Ref	Risk Description	Net (current) scores Quarter 4 2021/22			Further planned risk mitigation activity	Target risk score			Q4 Comments
		L	I	Total (LxI)		L	I	Total (LxI)	
									<p>services). This will put pressure on teams that were in high demand pre-pandemic. This goes alongside a likely fall in physical health and wellbeing amongst particularly our most deprived populations arising from falls in physical activity and other changes to lifestyles.</p> <p>As highlighted in previous reports the adverse mental health impacts of the Pandemic on many people within our communities has been high. This will place a significant demand on health and social care services. In addition, there is recognition that Long COVID symptoms are also having an adverse effect on a proportion of our residents. Whilst support services are being developed it is likely that the full extent of local need will require review.</p>
SR 12	Fragility and failure in the social care market	4	4	16	<p>Identify short term funding to support care providers to maintain sufficiently qualified workforce to meet need and reduce pressure on hospitals</p> <p>Establish a CEC crisis response team who can be called on at short notice to deliver care</p> <p>Expand the existing British Red Cross service to respond to crisis situations in the community by providing low level support over a 7 day period</p> <p>Undertake a review of care fees for all sectors of the market</p> <p>ASC/ Commissioning continues to respond to significant challenges pertaining to the acceleration of prevention.</p> <p>ASC/Commissioning and Communities have a Standard Set of Fit for the Future Contracts – that set out specific measurable outcomes pertaining to each service area in driving prevention and key performance indicators that will test the providers ability to retain a viable and sustainable business in responding to a population of changing need – higher levels of resident satisfaction and improved control.</p> <p>Continue to monitor and review preventative and support service activity.</p> <p>Improved utilisation of public health JSNA and wider regional data sets informing future commissioning plans.</p> <p>Develop engagement with community groups and 3rd sector.</p> <p>Liquid logic and controccc solutions to better map trend and demand.</p> <p>To monitor and review thresholds and gatekeeping processes</p> <p>Review and strengthen partnership working with wider agencies.</p> <p>Data intelligence is used to understand where and what kind of service demand needs are in order to commission appropriately and effectively.</p> <p>Continue to engage with leaders across teams – informing and influencing change.</p> <p>Continued engagement with people who access services and the involvement of Healthwatch and independent advocacy</p> <p>Joint working with ‘skills for care’ to encourage individuals to take up employment within the care sector.</p> <p>Ongoing support for care providers to assist in their response to the COVID-19 outbreak</p> <p>‘Hidden Carer’s’ initiative launched through Carer’s Hub to help identify and support carers not known to the system</p>	3	3	9	<p>Still experiencing difficulty with the care at home market – we are still experiencing handing back of packages and have a significant number of people in short term beds and on a waiting list. Health have agreed to assist with a fee increase of 14% to help the Care at home market.</p>

Risk Ref	Risk Description	Net (current) scores Quarter 4 2021/22			Further planned risk mitigation activity	Target risk score			Q4 Comments
		L	I	Total (LxI)		L	I	Total (LxI)	
SR 13	Reputation	3	3	9	Explore development of communication strategies to influence public awareness of and provide quality information about key universal services, inc: planning, highways, waste and recycling Further development of the communications approach to supporting decision making under the CTTE system Align developing communications strategy to customer experience, digital and consultation and engagement strategies Include customer enquiries, MES and MP correspondence in reputation monitoring Undertake a survey of residents to understand how they want to get information about council services, policies etc. To inform communications strategy(ies) and plans	3	3	9	(Q3 comments still apply).  Communications survey was in development in Q4 to be sent to representative sample of residents for response in April 2022. This will support development of communications strategy.  Communications programme for 2022/23 was also in development in Q4 and into Q1 2022/23.  During this period (Q4) we saw particular interest and activity in the following topics:  <ul style="list-style-type: none"> <li>• Great British Railway HQ bid</li> <li>• COVID-19 response</li> <li>• Road funding and maintenance (including gritting programme)</li> <li>• Avian influenza</li> <li>• Carbon neutral programme</li> <li>• Community Governance Review</li> <li>• Homes for Ukraine scheme</li> <li>• Budget setting / Council Tax</li> </ul> We also held the first virtual 'Conversation with the Leader and Deputy Leader sessions.  We have seen consistently high levels of media interest, with around 91% positive and neutral coverage with 9% coverage classed as negative in this period.
SR 14	Climate Change (2025)	3	2	6	Secure capital funding for key infrastructure projects, e.g. fleet EV charging infrastructure, solar farm, included in MTFS Secure land for tree planting and solar farm development; Land use assessment undertaken with recommendation for allocation of land to Economy & Growth Committee; review progress end of Q4 2021/22 Monitoring of emerging technologies; annual report to committee	2	2	4	Cheshire East Council committed itself to becoming carbon neutral for its own operations by 2025 and to using its influence to assist the borough in reducing its carbon impact. To enable this a Carbon Action Plan was produced to detail the measures that would need to be taken in order to achieve this commitment.  While the Council is seeking to cover core cost of the program and feasibility though the allocated program budget individual services and directorates may require additional funding to meet high standards such building Bream excellent or equivariant and carbon zero transport commitments. Where possible grant funding will be used, and costs spread over the 4-year life of the program. Any additional funding request will form part of future MTFs business case cycles.  Climate change has adversely affected the residents of Cheshire East by the increasing impacts of adverse weather. Adverse

Risk Ref	Risk Description	Net (current) scores Quarter 4 2021/22			Further planned risk mitigation activity	Target risk score			Q4 Comments
		L	I	Total (LxI)		L	I	Total (LxI)	
									weather has been experienced in several ways, most notably the increased frequency and ferocity of flooding experienced in recent years, specifically in Poynton, Bollington, Nantwich and the rural areas to the south of the borough. These flooding events have exposed frailties in the drainage network and identified clear areas of focus with partnering risk management agencies such as the Environment Agency and United Utilities.
SR 15	Economy Risk	3	3	9		2	2	4	<p>No further changes to scoring or commentary from Q3 as both still apply.</p> <p>Due to continued pressure in the wider economy both nationally and internationally, there is no variance to the scoring of risk.</p> <p>There is added risk with significant cost increases in utilities, gas and electric prices, and continued impact of construction inflation, supply chain shortages, and increased interest rates. Covid transmission remains high but self-isolating guidelines have relaxed but residual pressure remains in the market, which is still vulnerable to new variants and market confidence.</p> <p>Economic outlook remains fragile.</p>

# Strategic Risk Register Heat Map – Quarter 2 2021/22

Likelihood	Very Likely	4			SR4	SR1A SR2 SR12
	Likely	3		SR14	SR1C SR3 SR5 SR8A SR11 SR13 SF15	SR6 SR7 SR8B SR10 (O)
	Unlikely	2			SR9	
	Very Unlikely	1				
			1	2	3	4
			Minor	Significant	Serious	Major
			Impact			

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# Scoring Chart for Impact and Likelihood

Scoring Chart for IMPACT						
	Factor	Score	Effect on Service/Project	Embarrassment/Reputation	Personal Safety	Financial Implications
THREATS	Major	4	<b>Service</b> - Major loss of several important areas. Disruption 5+ days <b>Project</b> - Complete failure or extreme delay (3 months or more)	Adverse and persistent national media coverage. Adverse central government response	Death	>£1m or >£5m for strategic risks
	Serious	3	<b>Service</b> - Complete loss of an important area. Major effect to service in one or more areas for a period of weeks. Disruption 3-5 days. <b>Project</b> - Significant impact on project or expected benefits fail/major delay (2-3 months)	Adverse local publicity of a major and persistent nature. Adverse publicity in professional/municipal press arena	Major injury	Between £1m and £500,000
	Significant	2	<b>Service</b> - Major effect to an important area or adverse effect in one or more areas for a period of weeks. Disruption 2-3 days. <b>Project</b> - Adverse effect on project/significant slippage (3 weeks - 2 months)	Adverse local publicity/local public opinion aware	Severe injury	Between £500,000 and £100,000
	Minor	1	<b>Service</b> - Brief disruption of important area. Significant effect to non crucial area. Disruption 1 day. <b>Project</b> - minimal impact to project/slight delay less than 2 weeks.	Complaint from individual/small group	Minor injury or discomfort	Less than £100,000
OPPORTUNITIES	Exceptional	4	Major improvements to services, generally or across a broad range	Positive national press. National award or recognition by national government	Major improvement in health, welfare and safety	Producing more than £50,000
	Significant	3	Major improvement to service or significant improvement to critical service area.	Recognition of successful initiative. Sustained recognition and support from national press.	Significant improvement in health, welfare and safety	Producing up to £50,000

Scoring Chart for LIKELIHOOD					
Factor	Score	THREATS - Description	Indicators	OPPORTUNITIES (Favourable Outcome) description	Indicators
Very likely	4	>75% chance of occurrence	Regular occurrence. Frequently encountered - daily/weekly/monthly	>75% chance of occurrence or achieved in one year	Clear opportunity, can be relied on with reasonable certainty to be achieved in the short term.
Likely	3	40%-75% chance of occurrence	Within next 1-2 years. Occasionally encountered (few times a year)	40% to 75% chance of occurrence. Reasonable prospects of favourable results in one year.	May be achievable but requires careful management. Opportunities that arise over and above the plan.
Unlikely	2	10%-40% chance of occurrence	Only likely to happen once in 3 or more years	<40% chance of occurrence or some chance of favourable outcome in the medium term.	Possible opportunity which has yet to be fully investigated by management
Very unlikely	1	<10% chance of occurrence	Rarely/never before	<10% chance of occurrence.	Has happened rarely/never before

### Work Programme – Audit and Governance Committee – 2021/22

Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
AG/32/21-22	26 May 2022	Annual Audit Letter 2020/21	Summary of the External Audit findings from the 2020/21 audit. The letter will also confirm the final audit fee	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/40/21-22	26 May 2022	Annual Risk Management Report 2021/22	To consider the Annual Risk Management Report 2021/22.	Executive Director Corporate Services				An open and enabling organisation	
AG/17/21-22	26 May 2022	External Audit 2021/22 Progress Report	To receive an update from the Council's External Auditors in relation to the 2021/22 external audit report to minimise risk and time slippage	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/23/21-22	26 May 2022	Internal Audit Plan 2021/22	To consider a summary of Internal Audit Work undertaken between September 2021 and December 2021.	Executive Director Corporate Services				An open and enabling organisation	
AG/14/21-22	26 May 2022	Member Code of Conduct	To approve and adopt a new Member Code of Conduct.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/9b/21-22	26 May 2022	Member Code of Conduct Sub-Committee Report (STC)	To receive a report on the outcome of the Hearing Sub Committees.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/18/21-22	26 May 2022	Members Code of Conduct Process	To approve and adopt a new Code of Conduct Process.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	

Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
AG/25/21-22	26 May 2022	Standing Item: Compliance with Contract Procedure Rules	To receive an update on Waivers and Non-Adherences (WARNs).	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/26/21-22	26 May 2022	Standing Item: Compliance with Contract Procedure Rules (PART TWO)	To update the Committee on Waivers and Non-Adherences (WARNs): PART TWO	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	1, 2, 3
AG/21/21-22	26 May 2022	Standing Item: Upheld Complaints to the Local Government Ombudsman	To consider the Decision Notices issued by the Local Government Ombudsmen.	Director of Governance and Compliance (Monitoring Officer)		No	Yes	An open and enabling organisation	No
AG/21/21-22	26 May 2022	Standing Item: Upheld Complaints to the Local Government Ombudsman	To consider the decision notices issued by the Local Government Ombudsman.	Director of Governance and Compliance (Monitoring Officer)		No	yes	An open and enabling organisation	No
AG/24/21-22	26 May 2022	Standing Item: Work Programme 2021/22 and 2022/23	To consider the Committees Work Programme.	Executive Director Corporate Services				An open and enabling organisation	
AG/24/21-22	26 May 2022	Standing Item: Work Programme 2022/23	To consider the Committees Work Programme.	Executive Director Corporate Services				An open and enabling organisation	
AG/16/21-22	26 May 2022	VFM report from External Auditors	To receive the Value for Money report from the External Auditors in relation to the 2020/21 Statement of Accounts.	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/43/21-22	28 Jun 2022	Audit & Governance Committee Self-Assessment	To approve the adoption of the new CIPFA Code and the annual self-assessment.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/26/21-22	28 Jun 2022	Standing Item: Compliance with Contract Procedure Rules: PART TWO	To update the Committee on Waivers and Non-Adherences (WARNs): PART TWO	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/28/21-22	28 Jul 2022	Conflict of Interest Policy	To consider the Conflict of Interest Policy.	Director of Governance and Compliance (Monitoring Officer)		TBC	TBC	An open and enabling organisation	No



Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
AG/20/21-22	28 Jul 2022	Covid-19 Report	To consider the most recent report on the Council's response to Covid-19 as prepared and presented to the Council's Corporate Policy Committee.	Executive Director Corporate Services				An open and enabling organisation	
AG/38/21-22	28 Jul 2022	Draft Statement of Accounts 2021/22	To consider the Draft Statement of Accounts.	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/17/21-22	28 Jul 2022	External Audit 2021/22 Progress Report	To receive an update from the Council's External Auditors in relation to the 2021/22 external audit report to minimise risk and time slippage.	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/42/21-22	28 Jul 2022	Information Governance Report	To consider an Information Governance Report.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/23/21-22	28 Jul 2022	Internal Audit Annual Report 2021/22	To receive the Annual Internal Audit Report for 2021/22.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/41/21-22	28 Jul 2022	Monitoring Officer Report	To consider a report by the Monitoring Officer.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/22/21-22	28 Jul 2022	Risk Management Update	To update the Committee on Risk Management and Business Continuity activity in the Council.	Executive Director Corporate Services				An open and enabling organisation	
AG/25/21-22	28 Jul 2022	Standing Item: Compliance with Contract Procedure Rules	To update the Committee on Waivers and Non-Adherences (WARNs)	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/21/21-22	28 Jul 2022	Standing Item: Upheld Complaints to the Local Government Ombudsman	To consider the decision notices issued by the Local Government Ombudsman.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	

Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
AG/24/21-22	28 Jul 2022	Standing Item: Work Programme 2022/23	To consider the Committees Work Programme.	Executive Director Corporate Services				An open and enabling organisation	
AG/21/21-22	22 Sep 2022	Standing Item: Upheld Complaints to the Local Government Ombudsman	To consider the decision notices issued by the Local Government Ombudsman	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/44/21-22	29 Sep 2022	Audit & Governance Committee Annual Report	To consider the Committees Annual Report.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/17/21-22	29 Sep 2022	External Audit 2021/22 Progress Report	To receive an update from the Council's External Auditors in relation to the 2021/22 external audit report to minimise risk and time slippage	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/37/21-22	29 Sep 2022	Internal Audit Plan 2022/23	To receive a progress update on the Internal Audit Plan 2022/23	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/25/21-22	29 Sep 2022	Standing Item: Compliance with Contract Procedure Rules	To update the Committee on Waivers and Non-Adherences (WARNs)	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/26/21-22	29 Sep 2022	Standing Item: Compliance with Contract Procedure Rules: PART TWO	To update the Committee on Waivers and Non Adherences (WARNs) PART TWO.	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/24/21-22	29 Sep 2022	Standing Item: Work Programme 2022/23	To consider the Committees Work Programme.	Executive Director Corporate Services				An open and enabling organisation	
AG/15/21-22	29 Sep 2022	Whistleblowing Policy	To consider the Whistleblowing Policy and recommend to Council for approval.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	

Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
AG/17/21-22	24 Nov 2022	External Audit 2021/22 Progress Report	To receive an update from the Council's External Auditors in relation to the 2021/22 external audit report to minimise risk and time slippage	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/35/21-22	24 Nov 2022	Final Annual Governance Statement	To review the final version of the Audit and Governance Annual Governance Statement 2021/22 for approval.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/39/21-22	24 Nov 2022	Final Statement of Accounts	To consider the Final Statement of Accounts.	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/37/21-22	24 Nov 2022	Internal Audit Plan 2022/23	To receive a progress update on the Internal Audit Plan 2022/23.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/22/21-22	24 Nov 2022	Risk Management Update	To update the Committee on Risk Management and Business Continuity activity in the Council.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/25/21-22	24 Nov 2022	Standing Item: Compliance with Contract Procedure Rules	To update the Committee on Waivers and Non-Adherences (WARNs)	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/26/21-22	24 Nov 2022	Standing Item: Compliance with Contract Procedure Rules: PART TWO	To update the Committee on Waivers and Non-Adherences (WARNs): PART TWO	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/21/21-22	24 Nov 2022	Standing Item: Upheld Complaints to the Local Government Ombudsman	To consider the decision notices issued by the Local Government Ombudsman	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/24/21-22	24 Nov 2022	Standing Item: Work Programme 2022/23	To consider the Committees Work Programme.	Executive Director Corporate Services				An open and enabling organisation	

Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
AG/1/21-22	9 Mar 2023	Annual Audit Letter 2021/22	Summary of the External Audit findings from the 2021/22 audit. The letter will also confirm the final audit fee.	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/36/21-22	9 Mar 2023	Annual Governance Statement Progress Update	Update on actions to improve governance arrangements and respond to emerging issues identified in the 2021/22 Annual Governance Statement. Proposed process for the production of the 2022/23 Annual Governance Statement.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/45/21-22	9 Mar 2023	Certification of Claims and Returns 2021/22	To review the Certification of Claims and Returns 2021/22.	Director of Finance and Customer Services (s151 Officer)		N/A	N/A	An open and enabling organisation	N/A
AG/22/21-22	9 Mar 2023	Risk Management Update	To update the Committee on Risk Management and Business Continuity activity in the Council.	Executive Director Corporate Services				An open and enabling organisation	
AG/25/21-22	9 Mar 2023	Standing Item: Compliance with Contract Procedure Rules	To update the Committee on Waivers and Non-Adherences (WARNs).	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/26/21-22	9 Mar 2023	Standing Item: Compliance with Contract Procedure Rules: PART TWO	To update the Committee on Waivers and Non-Adherences (WARNs): PART TWO	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/21/21-22	9 Mar 2023	Standing Item: Upheld Complaints to the Local Government Ombudsman	To consider the decision notices issued by the Local Government Ombudsman.	Director of Governance and Compliance (Monitoring Officer)				An open and enabling organisation	
AG/24/21-22	9 Mar 2023	Standing Item: Work Plan 2022/23 & 2023/24	To consider the Committees Work Programme.	Executive Director Corporate Services				An open and enabling organisation	

Reference	Committee Date	Report title	Purpose of Report	Report Author /Senior Officer	Consultation and Engagement Process and Timeline	Equality Impact Assessment Required and Published (Y/N)	Part of Budget and Policy Framework (Y/N)	Corporate Plan Priority	Exempt Item and Paragraph Number
AG/16/21-22	9 Mar 2023	Value For Money Report from External Auditors	To receive the Value for Money report from the External Auditors in relation to the Statement of Accounts.	Director of Finance and Customer Services (s151 Officer)				An open and enabling organisation	
AG/34/21-22	28 Jul 2023	Draft Annual Governance Statement 2021/22	Update on actions to improve governance arrangements and respond to emerging issues identified in the 2020/21 Annual Governance Statement. Proposed process for the production of the 2021/22 Annual Governance Statement.	Executive Director Corporate Services				An open and enabling organisation	

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## **Audit & Governance Committee**

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**Date of Meeting:** 26 May 2022

**Report Title:** Waivers and Non-Adherences (WARNs)

**Report of:** Alex Thompson – Director of Finance and Customer Services – S151 Officer

**Report Reference Number:** AG/25/21-22 & AG/26/21-22

**Ward(s) Affected:** ALL

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### **1. Report Summary**

- 1.1. The purpose of this report is to provide an update to the Audit and Governance Committee on the number of cases where, and reasons why, procurement activity has required the use of waivers and/or non-adherences (WARNs). The report covers cases from 1<sup>st</sup> December 2021 to the 30<sup>th</sup> April 2022.
- 1.2. The approved WARNs are published retrospectively for information to the next appropriate Audit and Governance Committee. The total number of WARNs to be presented to the January Audit and Governance Committee is 15 (consisting of 11 waivers, 4 non-adherences).
- 1.3. All WARNs will be presented to the Audit and Governance Committee without any information redacted. However, they will be presented in Part 2 of the Committee as they may contain commercially sensitive information and/or Officer Details.

### **2. Recommendation/s**

That the Audit and Governance Committee:

- 2.1. Notes the reason for 11 waivers approved between 1<sup>st</sup> December 2021 and 30<sup>th</sup> April 2022 (37 in total in 2021/22).
- 2.2. Notes the reasons for the 4 non-adherences approved between 1<sup>st</sup> December 2021 and 30<sup>th</sup> April 2022 (4 in total for 2021/22).
- 2.3. Notes that the Finance Sub-Committee, on the 2<sup>nd</sup> March 2022, has reviewed the Waivers for this period as part of their responsibility for the pipeline of procurement activity.

### **3. Reasons for Recommendation/s**

- 3.1. The Audit and Governance Committee has an assurance role in overseeing governance arrangements within the Council. The Committee exercises this role in relation to the Council's Contract Procedure Rules (CPRs) by having oversight of the WARN process. The CPRs promote good procurement and commissioning practice, transparency, and clear public accountability.
- 3.2. In introducing the Committee system of governance, from May 2021, Council has allocated responsibility for the procurement pipeline to the Finance Sub-Committee. As such that sub-committee will receive reports on procurement activity, such as contracts awarded, contracts to be advertised, waivers and processes for significant procurement decisions.
- 3.3. WARNs cover Waivers which are pre-approved variations from the Contract Procedure Rules, and these form part of the procurement process. Non-Adherence recognises instances where CPRs have not been followed. As such the Audit & Governance Committee can seek assurance from the Finance Sub-Committee that procurement process has followed an appropriate approval process.

#### **4. Other Options Considered**

- 4.1. N/A

#### **5. Background**

- 5.1. All WARNs approved in the period between Audit and Governance Committees will be presented to the next Committee meeting. This report contains all WARNs approved from the 1<sup>st</sup> December 2021 to the 30<sup>th</sup> April 2022 (11 waivers and 4 non adherences).

The WARN process records the following:

- Waivers to the Contract Procedure Rules – These are agreed waivers in accordance with the Contract Procedure Rules, Chapter 3, Part 5. Section 7.1-7.4.
- Non-Adherence to the Contract Procedure Rules – This is a breach of the Contract Procedure Rules in accordance with Chapter 3, Part 5. Section 7.5 - 7.12.

Waivers are a compliant part of the Contract Procedure Rules and are used where there is a genuine business case to direct award without the need for competition.

**Table 1: Waiver's**

	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	April 2022
<b>Waivers</b>							



	40	20	16	17	25	37	1
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- 5.2 The number of waivers has increased in the past two years because of COVID and the impacts it has had on the care market. There have been 22 WARNs approved due to issues within the care market and the Council needing to secure beds, 3 for COVID testing and behavioural campaigns and 3 for support for the Government's Afghan citizens resettlement scheme.

**Table 2: Non-Adherences**

<b>Non-Adherence</b>	<b>2016-2017</b>	<b>2017-2018</b>	<b>2018-2019</b>	<b>2019 - 2020</b>	<b>2020-2021</b>	<b>2021-2022</b>	<b>April 2022</b>
	33	10	5	1	3	4	0

- 5.3 Since December there has been 4 non-adherences, two were due to officers starting apprenticeships which were later discovered not to be on the relevant training frameworks and two were due to urgent pieces of work required for COVID. The supplier used were current suppliers to the council and were providing similar pieces of work under different contracts.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

- 6.1.1. All employees must ensure that they use any Council or other public funds entrusted to them through their job role in a responsible and lawful manner.
- 6.1.2. Employees must also seek to ensure value for money and take care to avoid the risk of legal challenge to the Council in relation to the use of its financial resources. The Council's Officer Delegations, Finance and Contract Procedure Rules and Operating Procedures must, therefore, be followed at all times. Waivers are a compliant procurement route within the Rules and oversight of their use forms part of the Finance Sub Committee's oversight and management functions.
- 6.1.3. The Audit & Governance Committee will receive reports on all WARNs as part of their assurance role.
- 6.1.4. The continued reporting of Waivers to the Audit & Governance Committee will provide assurance on both the operation of the Rules and

the oversight and management of a compliant process which seeks value for money but does mean that contracts are awarded without competition.

## **6.2. Finance Implications**

6.2.1. The Council's Constitution Finance Procedure Rule 2.11; Chapter 3 - Part 4: Section 2 explains that the Corporate Leadership Team (CLT) are responsible for working within their respective budget limits and to utilise resources allocated to them in the most efficient, effective and economic way. This is supported by effective commissioning, procurement processes and appropriate contract management.

6.2.2. Along with comments from Procurement and Legal Officers, Finance Officers are invited to make comments in respect of each WARN, to help ensure Finance Procedure Rules are adhered to in this regard. The comments of Finance Officers focus on whether the Service: has identified sufficient existing budget to cover the proposal; and has also considered how to achieve best value for money via the particular recommended course of action.

6.2.3 With regard to procurement activity relating to Covid-19, the Council is closely monitoring all additional expenditure in respect of responding to the pandemic and – as required for all local authorities – is reporting summary financial information to the Ministry of Housing, Communities & Local Government on a monthly basis, in terms of Covid-19-related spending and loss of income. The financial impacts on the Council are regularly reported to Members.

## **6.3. Policy Implications**

6.3.1. N/A

## **6.4. Equality Implications**

6.4.1. N/A

## **6.5. Human Resources Implications**

6.5.1. There are no direct implications for human resources.

## **6.6. Risk Management Implications**

6.6.1. The focus is the risk that processes are not complied with, which increases the likelihood of legal challenge causing financial and reputational risk to the Council. This includes procurement processes.

## **6.7. Rural Communities Implications**

6.7.1. There are no direct implications for rural communities.

**6.8. Implications for Children & Young People/Cared for Children**

6.8.1. There are no direct implications for children and young people.

**6.9. Public Health Implications**

6.9.1. There are no direct implications for public health.

**6.10. Climate Change Implications**

6.10.1. There are no direct implications for climate change.

**7. Ward Members Affected**

7.1. N/A

**8. Consultation & Engagement**

8.1. N/A

**9. Access to Information**

9.1. The background papers relating to this report can be inspected by contacting the report writer.

**10. Contact Information**

10.1. Any questions relating to this report should be directed to the following officer:

Name: Lianne Halliday

Job Title: Senior Manager - Procurement

Email: [lianne.halliday@cheshireeast.gov.uk](mailto:lianne.halliday@cheshireeast.gov.uk)

## Appendix 1

**CPR WAIVERS – CATEGORIES FOR INTERNAL REPORTING**

Category Ref	Ref Description
A	Genuine Emergency - which warrant an exception to the requirements of competition
B	Specialist Education or Social Care Requirements
C	Genuine Unique Provider - e.g. from one source or contractor, where no reasonably satisfactory alternative is available.
F	No valid tender bids received; therefore, direct award can be substantiated
G	Lack of Planning
H	Any other valid general circumstances up to the EU threshold
I	No time to undertake a tendering exercise, therefore extension necessary to avoid non-provision of deliverables
J	Procurement from any other source would be uneconomic at this time
K	Added value being offered by the Provider(s)
L	Extension is best option as highlighted in request form
D	Compatibility with an existing installation and procurement from any other source would be uneconomic given the investment in previous infrastructure
V	Covid-19 Exemption
E	In-depth Knowledge, skills and capability of project/services already in existence with consultants/providers carrying out related activity – therefore procuring new consultants/skills would be uneconomic given the investment in previous, related work.

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