



To: Members of the Audit & Governance Committee

***Notice of a Meeting of the Audit & Governance
Committee***

Wednesday, 12 September 2018 at 1.30 pm

Rooms 1&2 - County Hall, New Road, Oxford OX1 1ND

A handwritten signature in black ink that reads "Peter G. Clark".

Peter G. Clark
Chief Executive

September 2018

*Committee Officers: Colm Ó Caomhánaigh, Tel 07393 001096; E-mail:
colm.oacaomhanaigh@oxfordshire.gov.uk*

Membership

Chairman – Councillor Nick Carter
Deputy Chairman - Councillor Tony Ilott

Councillors

Paul Buckley
Ian Corkin
Charles Mathew

D. McIlveen
Les Sibley
Roz Smith

Vacancy

Co-optee

Dr Geoff Jones

Notes:

- ***There will be a pre-meeting briefing in the Members' Boardroom at County Hall on 7 September 2018 at 9.30am for the Chairman, Deputy Chairman and Opposition Group Spokesman.***
- ***Date of next meeting: 14 November 2018***

Declarations of Interest

The duty to declare.....

Under the Localism Act 2011 it is a criminal offence to

- (a) fail to register a disclosable pecuniary interest within 28 days of election or co-option (or re-election or re-appointment), or
- (b) provide false or misleading information on registration, or
- (c) participate in discussion or voting in a meeting on a matter in which the member or co-opted member has a disclosable pecuniary interest.

Whose Interests must be included?

The Act provides that the interests which must be notified are those of a member or co-opted member of the authority, **or**

- those of a spouse or civil partner of the member or co-opted member;
- those of a person with whom the member or co-opted member is living as husband/wife
- those of a person with whom the member or co-opted member is living as if they were civil partners.

(in each case where the member or co-opted member is aware that the other person has the interest).

What if I remember that I have a Disclosable Pecuniary Interest during the Meeting?.

The Code requires that, at a meeting, where a member or co-opted member has a disclosable interest (of which they are aware) in any matter being considered, they disclose that interest to the meeting. The Council will continue to include an appropriate item on agendas for all meetings, to facilitate this.

Although not explicitly required by the legislation or by the code, it is recommended that in the interests of transparency and for the benefit of all in attendance at the meeting (including members of the public) the nature as well as the existence of the interest is disclosed.

A member or co-opted member who has disclosed a pecuniary interest at a meeting must not participate (or participate further) in any discussion of the matter; and must not participate in any vote or further vote taken; and must withdraw from the room.

Members are asked to continue to pay regard to the following provisions in the code that *“You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself”* or *“You must not place yourself in situations where your honesty and integrity may be questioned.....”*.

Please seek advice from the Monitoring Officer prior to the meeting should you have any doubt about your approach.

List of Disclosable Pecuniary Interests:

Employment (includes *“any employment, office, trade, profession or vocation carried on for profit or gain”*.), **Sponsorship, Contracts, Land, Licences, Corporate Tenancies, Securities.**

For a full list of Disclosable Pecuniary Interests and further Guidance on this matter please see the Guide to the New Code of Conduct and Register of Interests at Members’ conduct guidelines.

<http://intranet.oxfordshire.gov.uk/wps/wcm/connect/occ/Insite/Elected+members/> or contact Glenn Watson on **07776 997946** or glenn.watson@oxfordshire.gov.uk for a hard copy of the document.

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named on the front page, but please give as much notice as possible before the meeting.

AGENDA

1. Apologies for Absence and Temporary Appointments

2. Declaration of Interests - see guidance note

3. Minutes

The minutes of the meeting held on 6 September 2018 will be taken at the next meeting on 14 November 2018.

4. Petitions and Public Address

5. Update on the Financial Management Action Plan (Pages 1 - 12)

1.35

The Director for Finance will give a presentation updating the Committee on the Financial Management Action Plan.

6. Internal Audit Plan - Progress Report (Pages 13 - 26)

2.15

This report provides an update on the Internal Audit Service, including resources, completed and planned audits and an update on counter-fraud activity.

The Committee is RECOMMENDED to note the progress with the 18/19 Internal Audit Plan and the outcome of the completed audits.

7. External Auditors (Pages 27 - 46)

2.30

A representative from the external auditors Ernst & Young will attend to present the following item:

- Annual Audit Letter

8. Joint Working Arrangements with Cherwell District Council: Governance Arrangements (Pages 47 - 90)

2.45

Report by the Director of Law & Governance

Cabinet agreed on 4 June 2018 to approve, in principle, a joint working arrangement with Cherwell District Council. Cherwell formally made the same decision in July. These arrangements are governed by a formal "Section 113 Agreement" (see Annex 1). That Agreement included the appointment of a joint Chief Executive and statutory Head of Paid Service, which was undertaken through the Council's normal constitutional processes, including a recommendation from the Remuneration Committee and final approval by Full Council on 10 July 2018.

Section 113 of the Local Government Act 1972 enables local authorities to enter into agreements with one another for the placing at the disposal of each other their respective officers for carrying out their respective functions.

The Section 113 Agreement, now in place, establishes a structure to enable proposals for joint working to be approved with the necessary Member oversight. Each proposal will need approval by each separate Authority.

These new arrangements clearly have an impact on the way in which the County Council undertakes its business and indeed constitutional changes are required in order to ensure good governance is maintained.

Consequently, this report brings the suite of relevant governance arrangements to this Committee so that it can assure itself of the sufficiency and effectiveness of these governance arrangements underpinning the joint working arrangements.

The Committee is RECOMMENDED to:

- a) **To note the agreed Section 113 Agreement (Annex 1);**
- b) **To note the agreed Terms of Reference for the Partnership Working Group (at Annex 2);**
- c) **To consider and approve Terms of Reference for the Joint Personnel Committee and the Joint Appeals Committee (at Annex 2);**
- d) **To note and endorse the 'Roles of Members and Officers and Dealing with Conflicts of Interest' Protocol (including the Ethical Walls Procedure appended to it) (Annex 3);**
- e) **To note and endorse the 'Chief Executive Protocol' at Annex 3 of this report;**
- f) **To agree regularly to monitor the operation of the 'Roles of Members and Officers and Dealing with Conflicts of Interest' Protocol (including the Ethical Walls Procedure appended to it) as at Annex 3 of this report;**
- g) **To delegate authority to the Monitoring Officer to make any further minor adjustments to these documents and to make the necessary changes to the Council's Constitution.**

9. Local Government Ombudsman - Annual Review Report (Pages 91 - 102)

3.45

Report by the Monitoring Officer.

Each year, the Local Government Ombudsman (LGO) issues an Annual Review Report about each council in relation to the complaints made to the Ombudsman about that Council in the previous financial year. My report to this Committee therefore informs members about the LGO's Annual Review Report for Oxfordshire County Council for the year 2017/18.

In short, the LGO received fewer complaints about the Council in 2017/18 than in the previous year – 44 complaints and enquiries rather than the 66 in 2016/17. However, of these 44, 40 were decided in the financial year in question, of which 7 were upheld which was the same as the previous year, indicating a slight increase in percentage terms of upheld complaints.

In the context of county council performance generally, the Council has the third lowest number of complaints decided compared with other County Councils; and has the fourth lowest number of upheld complaints (seven in total) against the same comparison. It remains encouraging that fewer complaints were made to the LGO and in one case the LGO commended the Council's proactive action in resolving an issue.

This is not a case for complacency however and this report sets out the LGO's findings, the wider context and also details the complaints that were upheld by the LGO during 2017/18.

The Committee is RECOMMENDED to note and comment upon this report and on the Local Government Ombudsman's Annual Review of Oxfordshire County Council for 2017/18.

10. Compliance with the Regulation of Investigatory Powers Act 2000 and Use of Activities Within the Scope of This Act (Pages 103 - 116)

4.00

Report by the Monitoring Officer

The Regulation of Investigatory Powers Act 2000 ('the Act') regulates the use of covert activities by Local Authorities. It creates the statutory framework by which covert surveillance activities may be lawfully undertaken. Special authorisation arrangements need to be put in place whenever a Local Authority considers commencing covert surveillance or considers obtaining information by the use of informants or officers acting in an undercover capacity.

Codes of Practice issued under the Act provide guidance to authorities on the use of the Act. The Code of Practice relating to covert surveillance specifies that elected members should review the authority's use of the Act and set the policy at least once a

year. They should also consider internal reports on the use of the Act periodically.

This paper provides an overview of the use of activities falling within the scope of the Regulation of Investigatory Powers Act 2000 by Oxfordshire County Council in the period from April 2017 to March 2018. The report also provides an overview of the authority's Policy and the full policy is provided as an annex for committee members to review.

The Committee is RECOMMENDED to:

- (a) Consider and note the use of activities within the scope of the Regulation of Investigatory Powers Act by the Council and actions taken to address the outcome of the Office of Surveillance Commissioners report, and**
- (b) Note the revised Policy document at Annex 1 and to comment on any changes to the Policy for Compliance with the Regulation of Investigatory Powers Act 2000 that the committee would wish the Monitoring Officer to consider.**

11. Monitoring Officer Annual Report (Pages 117 - 124)

4.15

Report by the Monitoring Officer

The Audit and Governance Committee is responsible for promoting standards of conduct for elected councillors and co-opted members and for ensuring the integrity of the democratic decision-making process. Consequently, the Monitoring Officer reports annually to this Committee on relevant actions and issues that have occurred in the previous year. This report therefore summarises certain activities for the year 2017/18 i.e. immediately before and following the May 2017 County Council Election.

The Committee is RECOMMENDED to consider and endorse the report.

12. Audit Working Group Report (To Follow)

4.30

The Audit Working Group meets on 5 September 2018. The report from the meeting will be circulated as an Addendum when available.

13. Work Programme (Pages 125 - 126)

4.40

To review the Committee's Work Programme.

Close of meeting

An explanation of abbreviations and acronyms is available on request from the Chief Internal Auditor.

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Audit & Governance Committee 12 September 2018

Financial Management Action Plan

Background

- Presentation to AWG in April on 'Northamptonshire County Council Best Value Inspection and issues for Oxfordshire County Council to consider'
- Key issues in inspection report were:
 - *Poor clarity and accountability in terms of structure of the Council and working arrangements*
 - *Lack of clarity and no evidence to support a new operating model*
 - *Lack of cohesiveness in senior management team*
 - *Poor culture relating to challenge and criticism*
 - *Scrutiny by Audit Committee not effective*
 - *Scrutiny arrangements limited and issues around access to information*
 - *Lack of accountability and deliverability of savings targets*
 - *Effectiveness of financial management*
 - *No budgetary control*
 - *Unplanned and significant use of one-off resources to balance budget in-year*

Issues for Oxfordshire County Council to consider

- Effectiveness of financial management and budgetary control were the two areas where some assurance was sought on OCC's position
- A financial management action plan was proposed as a result with the actions on the next slide
- This presentation sets out the early progress against the actions

- *Undertake a self- assessment of organisational financial management using the CIPFA Financial Management Toolkit*
- *Refresh Financial Regulations to include stronger focus on compliance*
- *Develop and deliver Financial Management responsibilities refresher training*
- *Restructure and re-define the Finance Function so it better supports the changing needs of the organisation*
- *Review the overall governance framework to ensure it is working effectively and supporting the needs of the organisation*
- *Document and agree structured financial reporting to DLTs, CLT, Informal Cabinet and PGL*
- *Improve financial reporting to Cabinet & Performance Scrutiny Committee including inclusion of FFF project tracking and possible reporting of Capital Programme separately*

Undertake a self- assessment of organisational financial management using the CIPFA Financial Management Toolkit

- Questionnaire was issued in July to 376 Officers and 19 Members, of which 229 Officers and 3 Members completed – a 59% response rate. Received approximately 450 comments back
- 30 1:1 interviews held in August with a selection of officers and members who had been sent the questionnaire
- Analysis of findings currently underway with a Finance Leadership Team and project team session planned for mid September to review and commence action planning
- Report on action plan due at AWG 24th October

Refresh Financial Regulations to include stronger focus on compliance

- Sections 1-4 of the Financial Regulations have been updated as at 1 September. These include:
 - Introduction,
 - Roles and Responsibilities
 - Financial Planning
 - Financial Management
- The updated regulations overall provide greater clarity and include more detail financial planning (e.g. reserves, trading accounts) and clearer actions in respect of budgetary control including a requirement to meet with the s151 and the Cabinet Member for Finance to discuss an action plan which will be reported to Cabinet.

Develop and deliver Financial Management responsibilities refresher training

- This will be developed following the review of findings from the CIPFA Financial Management Toolkit.
- It will also need to link with the new operating model.

Restructure and re-define the Finance Function so it better supports the changing needs of the organisation

- The new operating model will be considered by Cabinet in September with a decision made on implementation in October
- Whilst it is not expected that the Finance function will be in the early stages of release, there are opportunities now to restructure to support the organisation as it begins its transition. Consultation is expected to commence end of September
- Measures of success for the Finance Function are being developed both those that are relevant to the leadership of the service and also in relation to our customers

Review the overall governance framework to ensure it is working effectively and supporting the needs of the organisation

- Governance is a key enabler of the new operating model (as discussed at A&G Committee on 5th September). If the new operating model is agreed, then this action will be picked up as part of implementation

Document and agree structured financial reporting to Directorate Leadership Teams, County Leadership Team, Informal Cabinet and PGL

Reporting period	DLTs	CLT	Cabinet
Aug 2018	Sept	Sept	Oct
Sept 2018	Oct	Oct	
Oct 2018	Nov	Nov	Dec
Nov 2018	Dec	Dec	
Dec 2018	Jan	Jan	
Jan 2019	Feb	Feb	Mar
Feb 2019	Mar	Mar	Apr
Outturn	May	May	June

Improve financial reporting to Cabinet & Performance Scrutiny Committee including inclusion of FFF project tracking and possible reporting of Capital Programme separately

Page 11

- Decision made on a separate report to Cabinet on the Capital Programme. The first separate report was presented to Cabinet in July
- Financial Monitoring reports now include key indicators and improved presentation of information
- Fit for the Future project savings are currently being tracked through the Fit for the Future Board. The majority of these project savings are currently in the MTFP and the progress on these is reported to Cabinet as part of the Financial Monitoring reports

‘In Local Government there’s no substitute for doing boring really well. Only when you have a solid foundation can you innovate.’

Division(s): N/A

AUDIT and GOVERNANCE COMMITTEE – 12 September 2018

INTERNAL AUDIT 2018/19 PROGRESS REPORT

Report by the Director of Finance

INTRODUCTION

1. This report provides an update on the Internal Audit Service, including resources, completed and planned audits and an update on counter-fraud activity.

RESOURCES

2. A full update on resources was made to the Audit and Governance Committee in April 2018 as part of the Internal Audit Strategy and Plan for 2018/19. The Senior Auditor (who also covered counter fraud) took a six-month secondment to the Policy Team (May to November 2018). His chargeable audit days lost due to this arrangement are being covered by two/three audit staff from an external firm working on a secondment basis. The staff have received their induction and audit work has started. His responsibilities for counter fraud have been transferred to one of the Principal Auditors whose responsibilities are currently being reviewed as part of the development of the new counter fraud arrangements. The Senior Auditor has recently been offered a permanent position within the Policy Team which he has accepted. The recruitment process will therefore be initiated as soon as possible to find a permanent replacement.
3. The two Auditors within our team are continuing to undertake professional study, having both passed the IIA's Certified Internal Auditor Qualification, they have now sat the first exam of the final level and both successfully passed – Chartered Internal Audit Qualification. The Principal Auditor is now also studying for the Chartered Qualification and will be sitting the first exam in the Autumn.

2017/18 INTERNAL AUDIT PLAN - PROGRESS REPORT

4. The 2018/19 Internal Audit Plan, which was agreed at the April Audit & Governance Committee, is attached as Appendix 1 to this report. This shows current progress with each audit.

5. There have currently been no amendments to the plan for 2018/19. The plan and plan progress will be reviewed with the individual directorate leadership teams during September and October.
6. There have been 4 audits concluded since the last update (provided to the April meeting of the Audit and Governance Committee); summaries of findings and current status of management actions are detailed in Appendix 2. The completed audits are as follows:

Directorate	2018/19 Audits	Opinion
Resources - ICT	Network Management	Green
People – Adults	Payments to Providers	Amber
People – Children’s	EDT	Green
Corporate	Fit for the Future Governance Arrangements	Amber

PERFORMANCE

7. The following performance indicators are monitored on a monthly basis.

Performance Measure	Target	% Performance Achieved for 17/18 audits (as at 28/8/18)	Comments
Elapsed time between start of the audit (opening meeting) and Exit Meeting.	Target date agreed for each assignment by the Audit manager, stated on Terms of Reference, but should be no more than 3 X the total audit assignment days (excepting annual leave etc)	80%	Previously reported year-end figures: 2017/18 80% 2016/17 60% 2015/16 58%

Elapsed Time for completion of audit work (exit meeting) to issue of draft report.	15 days	80%	Previously reported year-end figures: 2017/18 95% 2016/17 94% 2015/16 96%
Elapsed Time between issue of Draft report and issue of Final Report.	15 days	75%	Previously reported year-end figures: 2017/18 92% 2016/17 75% 2015/16 48%

The other performance indicators are:

- % of 2018/19 planned audit activity completed by 30 April 2019 - reported at year end.
- % of management actions implemented (as at 22/8/18) - 60%.
Of the remaining there are 17% of actions that are overdue and 23% of actions not yet due.

(At April 2018 A& G Committee the figures reported were 72% implemented, 10% overdue and 18% not yet due)

- Extended Management Team satisfaction with internal audit work - reported at year end.

COUNTER-FRAUD UPDATE

8. The 2018/19 Counter-Fraud Plan was presented to the July Audit & Governance committee, progress against the plan will next be reported to the November Audit and Governance Committee.
9. The new agreement with the Oxford City Investigation Team is being developed with a target date for the end of September for sign off. They will provide resource to support the assessment and triage of all referrals, with the Internal Audit team continuing to manage the referral process and maintain the fraud log for the first six months. This will enable knowledge transfer to the City Team regarding OCCs cases, systems and processes. Where formal fraud investigations are required these will be managed and delivered by the Investigation Team. They

will be responsible for providing expertise, training and assistance with communications. They will also take over the full management of the NFI (National Fraud Initiative) exercise from the initial fair processing notices, uploading of data sets, review of results and system recording.

RECOMMENDATION

10. The Committee is RECOMMENDED to note the progress with the 18/19 Internal Audit Plan and the outcome of the completed audits.

Sarah Cox
Chief Internal Auditor

Background papers: None.
Contact Officer: Sarah Cox : 07393 001246

APPENDIX 1 - 2018/19 INTERNAL AUDIT PLAN - PROGRESS REPORT

Audit	Planned Qtr start	Status	Conclusion
People: Financial Management	Q1-Q4	Scoping	
People: Contract Management - Supplier Resilience	Q2	Fieldwork	
Adults: Payments to Providers (Home Support and Residential)	Q1	Final Report	Amber
Adults: Waiting List	Q1/Q2	Fieldwork	
Adults: Client Charging (including ASC debt)	Q3	Scoping	
Adults – Contract Management – Reablement – Contingency	Q1/Q2	Fieldwork	
Adults – Implementation of pre-paid cards for direct payments	Q3/Q4		
Children – Implementation of IT system	Q2-Q4		
Children: Retention, including training and development	Q2	Fieldwork	
Children: Foster Payments	Q4		
Children: Children’s Social Care Payments	Q4		
Children: Thriving Families	Q2/Q4	Claim 1 - Fieldwork	
Children: Thames Valley Adoption Service	Q3/Q4		
Children: EDT (Emergency Duty Team)	Q1	Final Report	Green
Children: Care Placements	Q3/Q4		
Children: Census Team	Q2	Fieldwork	
Communities: Financial Management	Q1-Q4	Scoping	
Communities: Financial Management – Income	Q1	Draft Report	Amber
Communities: Highways Contract Payments	Q3		
Communities: Waste - Contract Management	Q2-Q3	Fieldwork	
Communities: S106	Q4		

Communities: Property - Facilities Management	Q3/Q4		
Communities / Resources			
Communities / Resources: Capital Programme – Governance and Delivery	Q3		
Communities / Resources: Oxfordshire Housing and Growth Deal – Accountable body	Q4		
Resources: Financial Management	Q1-Q4	Scoping	
Finance - Pensions Administration	Q3/Q4		
Finance - Purchasing / Procurement (covering pre-paid cards – see adults above)	-	-	-
Finance - Payroll	Q4		
Finance - Accounts Receivable	Q4		
Finance - Treasury Management	Q4		
ICT – Back-up and Recovery	Q4		
ICT - IT Incident Management	Q3		
ICT - Data Centre Refresh	Q3		
ICT - Network Management	Q1	Final Report	Green
ICT - Internet and Email Access	Q4		
Corporate / Cross Cutting - Governance			
Fit for the Future – governance arrangements	Q1	Final Report	Amber
Fit for the Future – new Target Operating Model	Q3 onwards		
GDPR – General Data Protection Regulation	Q2	Exit Meeting	
Health & Safety	Q1/Q2	Exit meeting	
Business Continuity	Q2	Fieldwork	

APPENDIX 2 - EXECUTIVE SUMMARIES OF COMPLETED AUDITS

Network Management Review 2018/19

Opinion: Green	03 August 2018	
Total: 3	Priority 1 = 0	Priority 2 = 3
Current Status:		
Implemented	0	
Due not yet actioned	0	
Partially complete	0	
Not yet Due	3	

Overall conclusion on the system of internal control being maintained	G
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RISK AREAS	AREA CONCLUSION	No of Priority 1 Management Actions	No of Priority 2 Management Actions
Roles and Responsibilities	G	0	0
Network Documentation	G	0	0
Network Monitoring	A	0	3
		0	3

Appendix 1 provides a definition of the grading for each of the conclusions given.

The OCC corporate network comprises of a wide area network (WAN) that provides connectivity to sites, each of which has a local area network (LAN). The WAN is a commissioned service that is managed by Vodafone and all LAN's are managed in-house by ICT Business Delivery. The demarcation line between ICT Business Delivery and Vodafone are the routers at each site; Vodafone manage the network up to and including the router and ICT manage everything beyond it. Previous IT audits have confirmed that there is a formal contract for the WAN and that regular service review meetings are held with Vodafone.

The Technical Services team within ICT Business Delivery are responsible for managing LAN's and infrastructure e.g. servers and storage. Roles and responsibilities are documented within job descriptions which were reviewed and confirmed to reference this area of work. Members of the Technical Services and Service Support teams have various areas of expertise and they are formally documented in a recently developed skills matrix.

Configuration information about the network and infrastructure is available. The majority of it is held on the IT solutions that are used for managing and monitoring these environments e.g. 'Zabbix' for servers and 'Solarwinds' for routers, switches and wireless

access points. There are also a number of network diagrams which are dated March 2018 and were documented for the PSN submission.

A review of Zabbix and Solarwinds confirmed that policies are applied for monitoring purposes and that they provide relevant management information to the ICT technical teams. Various thresholds and alerts are set on both systems but the ones on Solarwinds would benefit from review as they are either at default settings or use an email address for alerting that is no longer valid. An area of risk identified in regard to the network and infrastructure is that there is no reporting on future performance and capacity requirements.

EDT (Emergency Duty Team) Audit 2018/19

Opinion: Green	03 August 2018	
Total: 4	Priority 1 = 0	Priority 2 = 4
Current Status:		
Implemented	0	
Due not yet actioned	0	
Partially complete	0	
Not yet Due	4	

Overall conclusion on the system of internal control being maintained	G
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RISK AREAS	AREA CONCLUSION	No of Priority 1 Management Actions	No of Priority 2 Management Actions
Policies & Procedures	G	0	1
Operational Processes	G	0	0
Management Information	G	0	1
HR	A*	0	1
Finance	A	0	1
IT	G	0	0
		0	4

** area is amber, however no additional management actions required as issue already being addressed by management.*

Our overall conclusion is Green, on the basis that planned management action over the restructuring of the EDT service will address the risk of staff working excessive hours.

Our sample testing on EDT referrals demonstrated that, for the sample reviewed, the team are appropriately prioritising and dealing with referrals, accurately recording details on SO39 forms, and handing over referrals to the appropriate team/s. Areas of good practice could be evidenced in SO39 reports reviewed, which included escalating cases where necessary, and considering risks to both the individual and to workers when dealing with cases. Effective working relationships with other internal teams (e.g. REoC) and external agencies could also be evidenced, with plans in place under the proposed new structure to further develop these. Additional work has also gone into ensuring day time teams understand how referrals should be made to EDT for out of hours work, with effective measures in place to identify and escalate inappropriate / incomplete referrals.

The EDT service is currently staffed by a rota of dedicated social care staff who hold substantive posts in Children's or Adult Social Care, however these staff are increasingly working above the European Working Directive of 48 hours maximum per week, in order to resource the service. A review of the rota for the past 12 months found staff are regularly working over the target 4-6 shifts per month. Prior to the audit, this issue had been identified by the Team Manager and Service Manager, and reported to senior management. EDT is in the process of consulting on a restructure, with the aim of implementing a substantive team and splitting night shifts. This would decrease total hours worked by individual staff members and significantly reduce instances where staff work in excess of 48 hours per week. The Service are currently in staff consultation in relation to the new model.

From sample testing on expenditure incurred as part of dealing with an EDT referral, some issues were noted in relation to the coding of expenditure and in the review and approval of procurement card transactions. Whilst it was reported that any expenditure incurred as a result of an EDT referral should be coded to the team the individual is open to, sample testing identified this is not being applied consistently. Of the 20 referrals reviewed, there were seven referrals where expenditure had been incurred, but only one instance where the expenditure had been coded correctly. From testing undertaken on purchasing card activity for sample of EDT staff, it was found that purchasing card expenditure is not being reviewed or approved in line with Council policy. It is acknowledged that this non-compliance is not limited to EDT staff.

From a sample of referrals tested as part of this audit, risks are being assessed throughout referrals, and clear and frequent communication between the workers on shift and with external agencies could be seen on the referral forms reviewed. However, there are current inefficiencies in the way referrals are recorded and shared, as SO39 forms are completed and emailed to the relevant team(s) for action / information, who then save the form to the individual's Frameworki / LAS account. In order to provide management information and analysis of referrals, each form must be imported into an Excel spreadsheet. Management are aware of these issues and are working with ICT to explore how this process can be made more efficient when the new Children's ICT system is implemented. It is also noted that the Service will be required to review their end to end processes and whether any changes are required to these as part of the implementation of the new system.

Fit for the Future – Governance Arrangements Review 2018/19

Opinion: Amber	20 August 2018	
Total: 16	Priority 1 = 3	Priority 2 = 13
Current Status:		
Implemented	3	
Due not yet actioned	0	
Partially complete	0	
Not yet Due	13	

Overall conclusion on the system of internal control being maintained	A
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RISK AREAS	AREA CONCLUSION	No of Priority 1 Management Actions	No of Priority 2 Management Actions
Case for Change	G	0	0
FFF Board	G	0	6
Working Groups	A	0	4
Management Reporting	A	2	2
Financial Reporting	A	1	1
		3	13

The FFF (Fit for the Future) transformation programme implemented a new governance model just over six months ago, the Chief Executive and Director of Finance requested an internal audit to provide assurance over the governance arrangements prior to the programme progressing to the next phase. Whilst the audit has identified some areas of control weakness, the significant size, nature and scale of work now being managed by the FFF Board should be acknowledged. The audit has identified that the introduction of the new governance model has seen a significant improvement to the overall management of the transformation programme over the last six months. The implementation of the agreed management actions from this report will further strengthen governance arrangements for the next phase of the programme. It is also pleasing to report that since the audit fieldwork was completed and initial findings shared with senior management that action has already been taken to address a number of the points raised.

The FFF programme is currently in phase 3 and is addressing the opportunities identified in the case for change. The case for change was developed during phase 2 and focused on gaining a further understanding of the issues identified in the activity analysis undertaken in the summer of 2017 (phase 1) together with the development of new target operating model. Phase 3 also includes establishing a new governance structure for the FFF programme and the wider Programme Management Office (PMO). The work to develop the case for change was carried out by the consultants PwC, in conjunction with the Council. The case for change

has been documented and was approved by the FFF Working Group in January 2018. It has also been taken to Members, Informal Cabinet and there has been ongoing engagement with the Extended Political Group Leaders and the Cabinet portfolio holder. There is a decision point at the end of phase 3 regarding the new target operating model, which will be a Cabinet decision in September.

The FFF Board is chaired by the Chief Executive and includes the Assistant Chief Executive, Strategic Directors, Director of Finance, Strategic Partner (PwC) and the PMO. It is thus representative of the organisation and has the level of authority to make decisions on the transformation programme. The Board meet monthly, have a formal set agenda and a Terms of Reference but it was reviewed and found not to include a number of key areas, including objectives, quorate, inputs in terms of reporting requirements and outputs. There was also no evidence that the Terms of Reference had been approved. There is a potential conflict of interest between the Chief Executive's role as chair of the FFF Board and his role as chair of the Resources Working Group and governance could be strengthened by segregating these responsibilities. The other risks identified include roles and responsibilities for FFF Board members not being documented and Board actions not being followed up to confirm that they have been completed. A Communications Strategy has been documented and we understand that it was taken to the February Board but there is no evidence of it being approved.

The FFF Board has five working groups reporting to it, Resources; Communities, FFF, Adult's and Children's. Each working group has a Terms of Reference but we have found that with the exception of Children's they are not sufficiently detailed. We also found that with the exception of Communities, there is no evidence of the working group Terms of Reference being approved by the FFF Board. Each working group is sponsored by a Strategic Director and a project tracker is maintained that has details of the senior responsible officer and project manager for each project. The working groups meet monthly and have formal agendas, although it was noted that there is no consistency in the way meetings are recorded. There is a dedicated programme manager resource for Adult's and Children's but not for Resources and Communities and this should be reviewed to ensure the responsibilities associated with this role are being fulfilled for these two working groups. Information on roles and responsibilities at a project level, including that of the Finance Business Partner (FBP)/Senior Financial Advisor (SFA) are available on the Intranet, however, do not include HR and procurement who also have a role in working groups.

Highlight reports are used by working groups to review the delivery of individual projects. Template documents are available and used to ensure a consistent level of reporting. Whilst highlight reports include risks and issues at an individual project level, with the exception of Children's they are not managed at a working group level and there is no escalation of material risks and issues to the FFF Board. The FFF Board maintain a themed risk and issue log and there is a standing agenda item to review it at each meeting. However, we found that the log does not include the risk of not achieving the specified savings/benefits. The information received by the FFF Board includes a summary status of projects by working group, transformation savings and spend and a summary working group highlight report. The FFF Board also receive project close requests that are based on an agreed template and include the financial/non-financial benefits realised from the project.

The case for change identifies a benefit of between £33m - £58m for moving to a new operating model. This will be evaluated for accuracy and to ensure that the stated overall benefits are realistic and can be achieved. The implementation plan for the new operating model will provide a more detailed assessment of the anticipated savings, which will include the £17.4m required in the period 2019/20 – 2021/22 (as well as any overlap that exists with savings in the existing Medium Term Financial Plan). A review of these figures has therefore not been undertaken as part of this audit.

A finance tracker is maintained to monitor and report on FFF investments and savings. Each project should work with an FBP/SFA who should validate the financial content of documents before they are taken to working groups. However, there is no documented evidence that this happens and it is also noted that there is no finance data for some of the projects reported to the FFF Board via the working group highlight reports as they are “to be confirmed”. This includes projects in delivery and means that their investment costs and savings have not been identified/validated and cannot be monitored. It is acknowledged that FBP/SFAs attend each working group to provide financial oversight at the meetings.

Payments to Providers (Home Support and Residential) 2018/19

Opinion: Amber	10 August 2018	
Total: 23	Priority 1 = 1	Priority 2 = 22
Current Status:		
Implemented	0	
Due not yet actioned	0	
Partially complete	0	
Not yet Due	23	

Overall conclusion on the system of internal control being maintained	A
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RISK AREAS	AREA CONCLUSION	No of Priority 1 Management Actions	No of Priority 2 Management Actions
Risk Area A: Payment Accuracy and Timeliness	A	0	13
Risk Area B: Overpayments	R	1	9
		1	22

OCC paid £70m¹ for home support and £119m for residential care in 2017/18 (this includes health funded care packages, which are processed through OCC systems). The home support payments are mostly paid from actual visit data from the Electronic Time Management System (ETMS) whereas residential payments are paid based upon planned care packages.

Work is currently underway within Adult Social Care to address inefficiencies in the end-to-end process of setting up a care package, which will cover a number of the issues identified during the audit, including delays and inaccuracies in setting up and closing down CPLIs (these issues have also been reported on as part of previous audits).

Payment Accuracy and Timeliness

Home support payments

For home support providers, there has been an increase in remote logging of home visits, indicating a greater risk of error or fraud if providers log visits remotely, as demonstrated by the decrease in the 'Aura' scores from an average of 86% in March 2016 to 76% in March 2018 (the target is to achieve 90% direct log-ins). While providers are currently issued warnings for their low Aura scores, further controls need to be put in place to improve follow through. Management Information on Aura scores is insufficiently escalated and monitoring of overlapping, missed and double handed visits is inadequate.

Residential payments

Residential providers had not been accredited and vetted by the Quality & Contracts team prior to payment in 4 out of the 15 care packages sampled, all of which were out of county homes. This was due to the Sourcing team or Social Worker not notifying Quality & Contracts of the new placements.

There is inadequate scrutiny during quality monitoring visits that the current list of residents held by OCC is correct and matches the current residents actually in the home (the 'remittance' check). This results in a greater risk of overpayment through error or fraud going un-detected. Furthermore, providers not visited are not subject to any 'remittance' checks. However, a new 'remittance' checking process is scheduled this year within the recently re-structured Quality & Contracts team.

Actions agreed following the 2016/17 NFI exercise have not yet been fully implemented, including a communication to providers regarding notification of service user deaths (although this is in progress) and 3-monthly remittance checks for one provider who was a repeat offender in non-declaration of service user deaths.

Payment delays

From testing of delayed support plan tasks, as well as residential and home support cases in general, the main causes of the delays in setting up care packages and paying providers were issues with the completion and authorisation of Support Plans and Annex 2 forms. The average delay in payments for residential placements has been reported as being 2 to 3 months. As discussed above, these issues will be

¹ The home support figure includes payments made for Respite, Extra Care Housing and Supported Living services.

addressed as part of the process review currently being undertaken by the ASC Pathways & Process Group.

There are known issues with the efficiency of implementing provider price uplifts and payment of supported living voids, as well as the quality of information in both these areas; however new processes are currently being developed to address these problems.

It has also been reported that there are ongoing issues and concerns with the quality and timeliness of the information received for Continuing Health Care (CHC) payments (which are processed by OCC), leading to payment delays and an impact on the accuracy of budget forecasting. This is being monitored by the Finance Business Partner for Adult Social Care.

Overpayments

Overpayments were identified during testing in 2 of 15 cases, totalling just under £4k, due to duplication of CPLIs for the same service user within the same home, as a result of manual input errors with Sourcing team processes. There are no controls or checks in place within Controcc to prevent or identify duplicate CPLIs within the same home.

Testing also identified errors in the closedown of CPLIs for deceased service users, including a £7k provider overpayment which had not previously been identified due to the wrong end date being input on the system. The control in place did not effectively address this issue as the case was not identified for follow up. Furthermore, instances were found where residential providers had not been paid as required for an additional 7 days following the death of a service user, due to 'cancelled' rather than 'deceased' being selected as the reason for closedown.

An overpayment of £59k had been made (and identified prior to the audit) due to the duplication of a non-planned service, which was also due to a manual input error within the Sourcing team. Testing also found issues with the timeliness of reviewing non-planned services and pulling these through to a Support Plan, which could lead to OCC paying for services that are no longer required to meet the needs of the service user. Information on non-planned services is not currently reported to the ASC Performance Board.

Oxfordshire County Council

Annual Audit Letter for the year
ended 31 March 2018

August 2018

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The EY logo consists of the letters 'EY' in a bold, white, sans-serif font. Above the 'Y' is a yellow triangle pointing downwards.

Building a better
working world

Agenda Item 7

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Public Sector Audit Appointments Ltd (PSAA) have issued a 'Statement of responsibilities of auditors and audited bodies'. It is available from the Chief Executive of each audited body and via the PSAA website (www.psa.co.uk)

The Statement of responsibilities serves as the formal terms of engagement between appointed auditors and audited bodies. It summarises where the different responsibilities of auditors and audited bodies begin and end, and what is to be expected of the audited body in certain areas.

The 'Terms of Appointment (updated 23 February 2017)' issued by PSAA sets out additional requirements that auditors must comply with, over and above those set out in the National Audit Office Code of Audit Practice (the Code) and statute, and covers matters of practice and procedure which are of a recurring nature.

This Annual Audit Letter is prepared in the context of the Statement of responsibilities. It is addressed to the Members of the audited body, and is prepared for their sole use. We, as appointed auditor, take no responsibility to any third party.

Our Complaints Procedure - If at any time you would like to discuss with us how our service to you could be improved, or if you are dissatisfied with the service you are receiving, you may take the issue up with your usual partner or director contact. If you prefer an alternative route, please contact Steve Varley, our Managing Partner, 1 More London Place, London SE1 2AF. We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. Should you remain dissatisfied with any aspect of our service, you may of course take matters up with our professional institute. We can provide further information on how you may contact our professional institute.



1 - Executive Summary

We are required to issue an annual audit letter to Oxfordshire County Council (the Council) and Oxfordshire Pension Fund (the Pension Fund) following completion of our audit procedures for the year ended 31 March 2018.

Below are the results and conclusions on the significant areas of the audit process.

Area of Work	Conclusion
Opinion on the Council's and Pension Fund's:	Unqualified - the financial statements give a true and fair view of the financial position of the Council and Pension Fund as at 31 March 2018 and of its expenditure and income for the year then ended
▶ Financial statements	
▶ Consistency of other information published with the financial statements	Other information published with the financial statements was consistent with the Annual Accounts
Concluding on the Council's arrangements for securing economy, efficiency and effectiveness	We concluded that you have put in place proper arrangements to secure value for money in your use of resources

Area of Work	Conclusion
Reports by exception:	
▶ Consistency of Annual Governance Statement	The Annual Governance Statement was consistent with our understanding of the Council
▶ Public interest report	We had no matters to report in the public interest.
▶ Written recommendations to the Council, which should be copied to the Secretary of State	We had no matters to report.
▶ Other actions taken in relation to our responsibilities under the Local Audit and Accountability Act 2014	<p>There have been no objections raised in 2017/18, but we have also been considering the objections raised in prior years:</p> <p>An objection was made in 2016/17 to the Pension Fund accounts on the grounds that, in the view of the elector, the Pension Fund Committee has failed to actively manage the risk posed by the Fund's investment in fossil fuels. We have made initial enquiries of the Council, and have followed up on a number of their responses. We are currently considering additional responses from the Council. It is our view that even if the objection was subsequently resolved in the objector's favour, this would not affect the Statement of Accounts.</p> <p>An objection was made in 2015/16 to the Statement of Accounts in respect of the Council's Lender Option Borrower Option (LOBO) loans, as set out in our 2015/16 Audit Results Report. We have prepared a statement of reasons supporting our determination of the objection and this is currently subject to consultation ahead of being issued.</p> <p>We cannot formally conclude the audit and issue an audit certificate for 2015/16, 2016/17 or 2017/18 until we have completed the work necessary to conclude these two matters.</p> <p>During 2017/18, a matter was raised from a member of the public with regards to the Council's charging for DIY waste and whether this is in line with appropriate laws and regulations. We made enquiries of the Council and concluded that the Council was not in breach of any laws or regulations.</p> <p>We have no other matters to raise with the Audit & Governance Committee.</p>

Area of Work	Conclusion
Reporting to the National Audit Office (NAO) on our review of the Council's Whole of Government Accounts return (WGA).	We had no matters to report.

1 - Executive Summary (continued)

As a result of the above we have also:

Area of Work	Conclusion
Issued a report to those charged with governance of the Council and Pension Fund communicating significant findings resulting from our audit.	Our Audit Results Report was issued on 25 July 2018
Issued a certificate that we have completed the audit in accordance with the requirements of the Local Audit and Accountability Act 2014 and the National Audit Office's 2015 Code of Audit Practice.	<p>An objection was made in 2016/17 to the Pension Fund accounts on the grounds that, in the view of the elector, the Pension Fund Committee has failed to actively manage the risk posed by the Fund's investment in fossil fuels. We have made initial enquiries of the Council, and have followed up on a number of their responses. We are currently considering additional responses from the Council. It is our view that even if the objection was subsequently resolved in the objector's favour, this would not affect the Statement of Accounts.</p> <p>An objection was made in 2015/16 to the Statement of Accounts in respect of the Council's Lender Option Borrower Option (LOBO) loans, as set out in our 2015/16 Audit Results Report. We have prepared a statement of reasons supporting our determination of the objection and this is currently subject to consultation ahead of being issued.</p> <p>We cannot formally conclude the audit and issue an audit certificate for 2015/16, 2016/17 or 2017/18 until we have completed the work necessary to conclude these two matters.</p>

We would like to take this opportunity to thank the Council and Pension Fund's staff for their assistance during the course of our work.

Paul King
Associate Partner
For and on behalf of Ernst & Young LLP

2 - Purpose and Responsibilities

The Purpose of this Letter

The purpose of this annual audit letter is to communicate to Members and external stakeholders, including members of the public, the key issues arising from our work, which we consider should be brought to the attention of the Council.

We have already reported the detailed findings from our audit work in our 2017/18 Audit Results Report to the 25 July 2018 Audit & Governance Committee, representing those charged with governance. We do not repeat those detailed findings in this letter. The matters reported here are the most significant for the Council.

Responsibilities of the Appointed Auditor

Our 2017/18 audit work has been undertaken in accordance with the Audit Plan that we issued in March 2018 and is conducted in accordance with the National Audit Office's 2015 Code of Audit Practice, International Standards on Auditing (UK and Ireland), and other guidance issued by the National Audit Office.

As auditors we are responsible for:

Expressing an opinion:

- ▶ On the 2017/18 financial statements, including the pension fund; and
- ▶ On the consistency of other information published with the financial statements.
- ▶ Forming a conclusion on the arrangements the Council has to secure economy, efficiency and effectiveness in its use of resources.
- ▶ Reporting by exception:
 - ▶ If the annual governance statement is misleading or not consistent with our understanding of the Council;
 - ▶ Any significant matters that are in the public interest;
 - ▶ Any written recommendations to the Council, which should be copied to the Secretary of State; and
 - ▶ If we have discharged our duties and responsibilities as established by the Local Audit and Accountability Act 2014 and Code of Audit Practice.

Alongside our work on the financial statements, we also review and report to the National Audit Office (NAO) on your Whole of Government Accounts return. [The extent of our review and the nature of our report are specified by the NAO]

Responsibilities of the Council

The Council is responsible for preparing and publishing its statement of accounts accompanied by an Annual Governance Statement. In the AGS, the Council reports publicly each year on how far it complies with its own code of governance, including how it has monitored and evaluated the effectiveness of its governance arrangements in year, and any changes planned in the coming period.

The Council is also responsible for putting in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources.



3 - Financial Statement Audit

Key Issues

The Council's Statement of Accounts is an important tool for the Council to show how it has used public money and how it can demonstrate its financial management and financial health.

We audited the Council and Pension Fund's Statement of Accounts in line with the National Audit Office's 2015 Code of Audit Practice, International Standards on Auditing (UK and Ireland), and other guidance issued by the National Audit Office and issued an unqualified audit report on 25 July 2018

Our detailed findings were reported to the 25 July 2018 Audit & Governance Committee.

The key issues identified as part of our audit were as follows:

Significant Risk

Conclusion

Misstatements due to fraud or error

The financial statements as a whole are not free of material misstatements whether caused by fraud or error.

As identified in ISA (UK and Ireland) 240, management is in a unique position to perpetrate fraud because of its ability to manipulate accounting records directly or indirectly and prepare fraudulent financial statements by overriding controls that otherwise appear to be operating effectively. We identify and respond to this fraud risk on every audit engagement.

Pension Fund Only

The Fund's investments include unquoted investments such as private equity. Judgements are taken by the Investment Managers to value those investments whose prices are not publically available. Management may be able to influence these judgements and thus the valuation. This especially applies to the private equity portfolio managed in-house.

We have considered the risk of management override and the areas of the financial statements that may be most susceptible to this risk. We have concluded that the judgements we are focused on are items of non-routine income and expenditure, involving management estimation and judgement, rather than transactions created through routine invoicing processes.

Our work on the risk of management override therefore focussed on reviewing manual journal entries, through the use of our data analytics tools, as this is the way in management would most easily be able to manipulate accounting records

We addressed the residual risk of management override through the following procedures:

- We tested the appropriateness of journal entries recorded in the general ledger and other adjustments made in preparing the financial statements;
- We reviewed accounting estimates for evidence of management bias (as noted above relating to revenue and expenditure recognition);
- We considered the completeness of the minimum revenue provision (MRP) Charge;
- We evaluated the business rationale for any significant unusual transactions; and
- We reviewed accounting policies with particular focus on changes made or where policies are different to those suggested by the CIPFA Code.

For the Pension Fund, we undertook the following procedures:

- Undertook a review of reconciliations to the fund manager and custodian reports and investigated any reconciling differences;
- Checked the reconciliation of holdings included in the Net Assets Statement back to the source reports; and
- For level 3 investments we agreed information to source reports and the financial statements of the individual funds. We did this as part of our fair value hierarchy testing which covered the Fund's investments at all 3 levels.

We have not identified any material weaknesses in controls or evidence of material management override.

We have not identified any instances of inappropriate judgements being applied.

We did not identify any other transactions during our audit which appeared unusual or outside the Council's normal course of business. We did not identify any issues from our testing of the MIRS adjustments note.



3 - Financial Statement Audit (continued)

The key issues identified as part of our audit were as follows: (continued)

Other Key Findings	Conclusion
<p><u>Valuation of Land and Buildings</u> The fair value of Property, Plant and Equipment (PPE), including land and buildings, represents significant balances in the Council's accounts and are subject to valuation changes, impairment reviews and depreciation charges. Management is required to make material judgemental inputs and apply estimation techniques to calculate the year-end balances recorded in the balance sheet.</p>	<p>Our approach has focused on:</p> <ul style="list-style-type: none"> ▶ Consideration of the work performed by the Council's valuer, including the adequacy of the scope of the work performed, professional capabilities and the results of their work. This includes the use of our EY estates specialists who undertook a review of assumptions used by the valuers; ▶ Review and sample testing over the key asset information used by the Council's valuer in performing their valuation; ▶ Consideration of the annual cycle of valuations to ensure that assets have been valued within a 5 year rolling programme as required by the Code. We have also considered if there are any specific changes to assets that have occurred and that these have been communicated to the valuer; ▶ Review of the desktop review and valuations performed by the Council's valuer over assets not subject to formal valuation in 2017/18 to confirm that the remaining asset base is not materially misstated; ▶ Tested that the accounting entries have been correctly processed in the financial statements, including the treatment of impairments. ▶ Consideration of the Council's revaluation of the Oxfordshire Museum in 2017/18. <p>As a result of the testing above we did not identify any material issues in the valuations based on our work performed.</p>
<p><u>Pension Liability Valuation</u> The Local Authority Accounting Code of Practice and IAS19 require the Council to make extensive disclosures within its financial statements regarding its membership of the Local Government Pension Scheme administered by Oxfordshire County Council. The Council's pension fund deficit is a material estimated balance and the Code requires that this liability be disclosed on the Council's balance sheet. At 31 March 2018 this totalled £980.3 million. The information disclosed is based on the IAS 19 report issued to the Council by the actuary to the County Council. Accounting for this scheme involves significant estimation and judgement and therefore management engages an actuary to undertake the calculations on their behalf. ISAs (UK and Ireland) 500 and 540 require us to undertake procedures on the use of management experts and the assumptions underlying fair value estimates.</p>	<p>Our approach has focused on:</p> <ul style="list-style-type: none"> ▶ Liaising with the audit engagement team of the Oxfordshire Pension Fund, to obtain assurances over the information supplied to the actuary in relation to Oxford City Council; ▶ Assessing the conclusions drawn on the work and assumptions used by Hymans Robertson LLP (the Pension Fund actuary) by using and reviewing the work of the Consulting Actuary commissioned by Public Sector Auditor Appointments Ltd for all Local Government sector auditors (PwC); and ▶ Reviewing and testing the accounting entries and disclosures made within the Council's financial statements in relation to IAS19. <p>Assumptions used by the actuary and adopted by the Council are considered to be generally acceptable. However, the audit engagement team of the Oxfordshire Pension Fund did identify that the estimated valuation of plan assets used by Hymans Robertson, £2,327m, was smaller than the actual plan assets at year end of £2,355m by £28.4m. The Council's share of this difference is £14.3m.</p> <p>While not material, this is above our uncorrected misstatement threshold, and as such has been reported as an unadjusted misstatement in this report.</p>



3 - Financial Statement Audit (continued)

Other Key Findings	Conclusion
<p>Accounting for Service Concessions As part of our audit in 2016/17 we commissioned a detailed review and testing of the accounting models and related disclosures in the financial statements for Service Concessions by an EY expert. There was a difference of opinion in the application of the accounting treatment between the Council and our expert.</p> <p>This resulted in an unadjusted audit difference of £936k in 2016/17.</p>	<p>We engaged with management and our EY expert about the treatment of service concessions. We have reached an agreed position as a result of this engagement. We have reviewed the accounting entries and disclosures arising from this agreement in the 2017/18 accounts, with a focus on any significant changes since 2016/17.</p> <p>As a result of the testing above we did not identify any material issues in our work performed on service concessions.</p>
<p>Earlier deadline for production of the financial statements The Accounts and Audit Regulations 2015 introduced a significant change in statutory deadlines from the 2017/18 financial year. The timetable for the preparation and approval of accounts will be brought forward with draft accounts needing to be prepared by 31 May and the publication of the accounts by 31 July.</p> <p>These changes provide risks for both the preparers and the auditors of the financial statements.</p> <p>The Council now has less time to prepare the financial statements and supporting working papers. Risks to the Council include slippage in delivering data for analytics work in format and to time required, late working papers and internal quality assurance arrangements.</p> <p>As your auditor, we have a more significant peak in our audit work and a shorter period to complete the audit. Risks for auditors relate to delivery of all audits within same compressed timetable. Slippage at one client could potentially put delivery of others at risk.</p> <p>To mitigate this risk we require:</p> <ul style="list-style-type: none"> • good quality draft financial statements and supporting working papers by the agreed deadline; • appropriate Council staff to be available throughout the agreed audit period; and • complete and prompt responses to audit questions. 	<p>We</p> <ul style="list-style-type: none"> ▶ Engaged early with the Council to facilitate early substantive testing where appropriate and lessen pressure at year-end; ▶ Discussed with the Council consideration of streamlining of the Statement of Accounts where non-material disclosure notes are removed; ▶ Facilitated faster close workshops providing an interactive forum for Local Authority accountants and auditors to share good practice and ideas for a successful faster closure of accounts; ▶ Worked with the Council to implement EY Client Portal. This: <ul style="list-style-type: none"> ▶ Streamlined our audit requests through reducing emails and improving communication; ▶ Provided on-demand visibility into the status of audit requests and the overall audit status; ▶ Reduced risk of duplicate requests; and ▶ Provided better security for sensitive data. ▶ Agreed the team and timing of each element of our work with you; and ▶ Agreed the supporting working papers needed to complete the audit.

3 - Financial Statement Audit (continued)

Other Key Findings	Conclusion
<p>Pension Fund Only Change of Custodian There is a risk that, during transition, the data was not transferred over correctly, i.e. the values transferred are incorrect or the list of the assets is incomplete.</p>	<p>We focused on aspects of the financial statements where the assets could be incorrect because management could inappropriately allocate assets other than to the Pension Fund, dispose of them, or under/ over-value them e.g. by giving such instructions to the custodian.</p> <p>In response to the risk, we:</p> <ul style="list-style-type: none"> ▶ Obtained third party confirmation directly from both custodians of the assets transferred. ▶ Reconciled the closing position with BNP Paribas to State Street's opening position. ▶ Reviewed the valuation of each individual asset and investigate any differences. ▶ Reviewed the procedures the Pension Fund had in place over the transition. <p>We also engaged EY internal specialists on year-end investment valuations as part of our work over investment valuations.</p> <p>Our testing did not identify any material misstatements from the change of custodian. Overall our audit work did not identify any material issues or unusual transactions to indicate any misreporting of the Pension Fund's financial position.</p>

Our application of materiality

When establishing our overall audit strategy, we determined a magnitude of uncorrected misstatements that we judged would be material for the financial statements as a whole.

Item	Thresholds applied
Planning materiality (County)	<p>We determined planning materiality to be £19.4mn (2017: £9.7mn), which is 2% of gross expenditure on the provision of services reported in the accounts of £971.9 million.</p> <p>We consider gross expenditure on the provision of services to be one of the principal considerations for stakeholders in assessing the financial performance of the Council.</p>
Reporting threshold (County)	We agreed with the Audit & Governance Committee that we would report to the Committee all audit differences in excess of £0.9mn (2017: £0.5mn).

Item	Thresholds applied
Planning materiality (Pension Fund)	<p>We determined planning materiality to be £47.1mn (2017: £45.1m), which is 1% net assets.</p> <p>We consider net assets to be one of the principal considerations for stakeholders in assessing the financial performance of the Pension Fund.</p>
Reporting threshold (Pension Fund)	We agreed with the Audit & Governance Committee that we would report to the Committee all audit differences in excess of £2.2mn.

We also identified the following areas where misstatement at a level lower than our overall materiality level might influence the reader. For these areas we developed an audit strategy specific to these areas. The areas identified and audit strategy applied include:

- ▶ Remuneration disclosures including any severance payments, exit packages and termination benefits: Any error over £1k
- ▶ Related party transactions. Any error over £1k

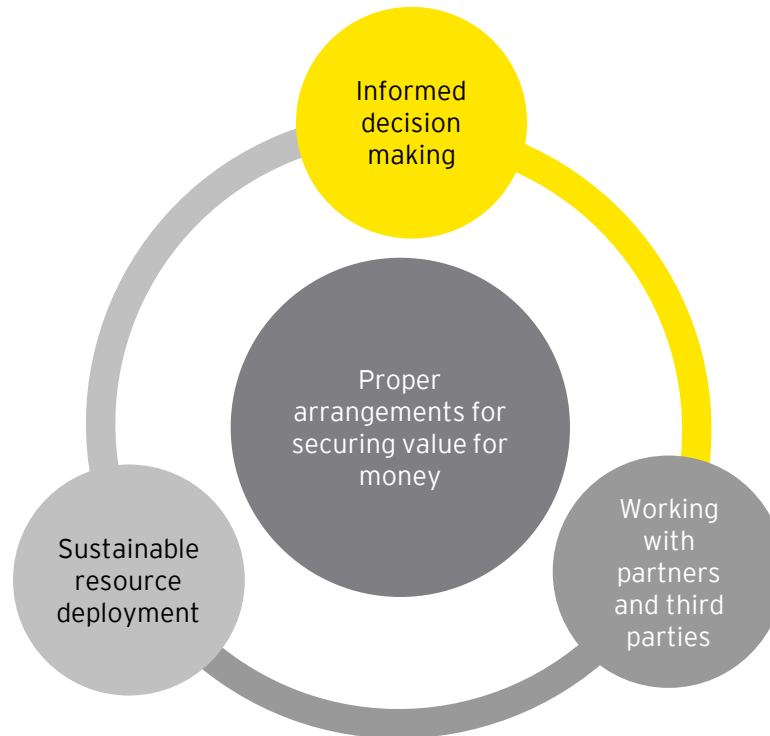
We evaluate any uncorrected misstatements against both the quantitative measures of materiality discussed above and in light of other relevant qualitative considerations.

£ 4 - Value for Money

We are required to consider whether the Council has put in place 'proper arrangements' to secure economy, efficiency and effectiveness on its use of resources. This is known as our value for money conclusion.

Proper arrangements are defined by statutory guidance issued by the National Audit Office. They comprise your arrangements to:

- ▶ Take informed decisions;
- ▶ Deploy resources in a sustainable manner; and
- ▶ Work with partners and other third parties.



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We identified 1 significant risk in relation to these arrangements. The tables below present the findings of our work in response to the risks identified and any other significant weaknesses or issues to bring to your attention.

We have performed the procedures outlined in our audit plan. We did not identify any significant weaknesses in the Council's arrangements to ensure it took properly informed decisions and deployed resources to achieve planned and sustainable outcomes for taxpayers and local people.

£ 4 - Value for Money (continued)

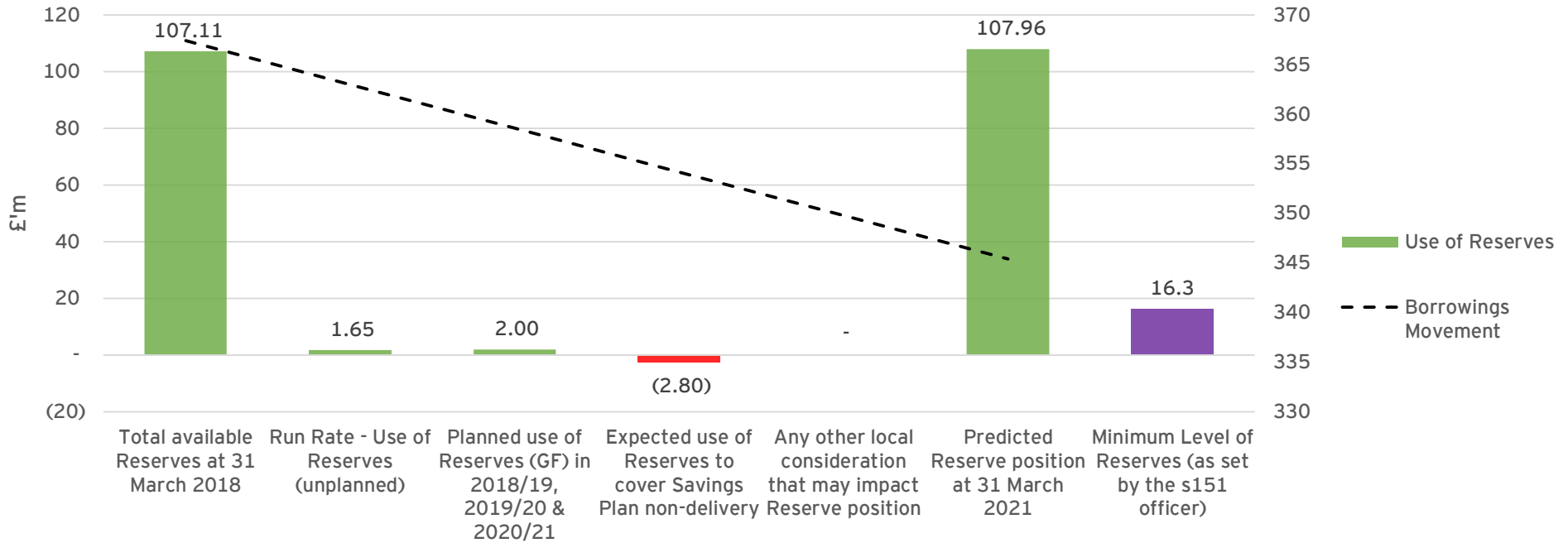
We therefore issued an unqualified value for money conclusion on 25 July 2018

Significant Risk	Conclusion
<p>▶ Working with partners and other third parties - Carillion</p> <p>In 2012, Oxfordshire County Council entered into a contract with Carillion LGS Ltd to provide building works, property services, maintenance of council buildings, school meals and cleaning.</p> <p>In December 2017, the Council reached an agreement with Carillion to terminate this contract early and to cease receiving all services except for maintenance, school meals and cleaning. The ending of this contract was set for June 2018.</p> <p>In January 2018, it was announced that Carillion were being put into liquidation. As a result the original agreement to end the contract was accelerated to February 2018. In addition all services have now been brought in house, including those that were planned to remain with Carillion.</p> <p>There are several areas of the Council's arrangements to consider:</p> <ul style="list-style-type: none"> ▶ The agreement made in December between Carillion and the Council. ▶ The provision of services in the transitional period between bringing services from Carillion to the Council. • The arrangements for determination of residual issues following Carillion being put into liquidation. 	<p>We:</p> <ul style="list-style-type: none"> ▶ Reviewed the agreement made in December 2017 between the Council and Carillion. ▶ Assessed the Council's arrangements to provide for the transition of services from Carillion to ensure continuity of service provision. ▶ Reviewed the work performed by the Council to reach a 'steady state' of service provision in these new areas. ▶ Reviewed of the agreements in place and the arrangements between the Council and Carillion (or the liquidator) for areas which were still with Carillion at the time of their liquidation, such as building defects resolution. <p>As a result of the procedures performed, we have been able to gain assurances that the Council had proper arrangements in place to work with partners and other third parties.</p>

£ 4 - Value for Money (continued)

Financial Position and Medium Term Financial Plan Assessment

Assessment of Reserves Position to 2021



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While not identified as a significant value for money risk for 2017/18, the financial position of Local Authorities and their future plans is in focus. We have undertaken an assessment of the Council's medium term financial plan to ensure planned savings are achievable and the usable reserves position is appropriate. The diagram above confirms that the Council are in a position to achieve their medium term financial plans.



5 - Other Reporting Issues

Whole of Government Accounts

We performed the procedures required by the National Audit Office on the accuracy of the consolidation pack prepared by the Council for Whole of Government Accounts purposes. We had no issues to report.

Annual Governance Statement

We are required to consider the completeness of disclosures in the Council's annual governance statement, identify any inconsistencies with the other information of which we are aware from our work, and consider whether it is misleading.

We completed this work and did not identify any areas of concern.

Report in the Public Interest

We have a duty under the Local Audit and Accountability Act 2014 to consider whether, in the public interest, to report on any matter that comes to our attention in the course of the audit in order for it to be considered by the Council or brought to the attention of the public.

We did not identify any issues which required us to issue a report in the public interest.

Written Recommendations

We have a duty under the Local Audit and Accountability Act 2014 to designate any audit recommendation as one that requires the Council to consider it at a public meeting and to decide what action to take in response.

We did not identify any issues which required us to issue a written recommendation.



5 - Other Reporting Issues (continued)

Objections received and matters raised by members of the public

We did not receive any objections to the 2017/18 financial statements from members of the public.

We have also been considering the objections raised in prior years:

An objection was made in 2016/17 to the Pension Fund accounts on the grounds that, in the view of the elector, the Pension Fund Committee has failed to actively manage the risk posed by the Fund's investment in fossil fuels. We have made initial enquiries of the Council, and have followed up on a number of their responses. We are currently considering additional responses from the Council. It is our view that even if the objection was subsequently resolved in the objector's favour, this would not affect the Statement of Accounts.

An objection was made in 2015/16 to the Statement of Accounts in respect of the Council's Lender Option Borrower Option (LOBO) loans, as set out in our 2015/16 Audit Results Report. We have prepared a statement of reasons supporting our determination of the objection and this is currently subject to consultation ahead of being issued.

We cannot formally conclude the audit and issue an audit certificate for 2015/16, 2016/17 or 2017/18 until we have completed the work necessary to conclude these two matters.

During 2017/18, a matter was raised from a member of the public with regards to the Council's charging for DIY waste and whether this is in line with appropriate laws and regulations. We have made enquiries of the Council and were able to establish that the Council approach was in line with appropriate laws and regulations.

Other Powers and Duties

We identified no issues during our audit that required us to use our additional powers under the Local Audit and Accountability Act 2014.

Independence

We communicated our assessment of independence in our Audit Results Report to the Audit & Governance Committee on 25 July 2018. In our professional judgement the firm is independent and the objectivity of the audit engagement partner and audit staff has not been compromised within the meaning regulatory and professional requirements.

Control Themes and Observations

As part of our work, we obtained an understanding of internal control sufficient to plan our audit and determine the nature, timing and extent of testing performed. Although our audit was not designed to express an opinion on the effectiveness of internal control, we are required to communicate to you significant deficiencies in internal control identified during our audit.

We have adopted a fully substantive approach and have therefore not tested the operation of controls.

Our audit did not identify any controls issues to bring to the attention of the Audit & Governance Committee.



6 - Use of Data Analytics in the Audit

Analytics Driven Audit

Data analytics

We used our data analysers to enable us to capture entire populations of your financial data. These analysers:

- ▶ Help identify specific exceptions and anomalies which can then be the focus of our substantive audit tests; and
- ▶ Give greater likelihood of identifying errors than traditional, random sampling techniques.

In 2017/18, our use of these analysers in the Council's audit included testing journal entries, to identify and focus our testing on those entries we deem to have the highest inherent risk to the audit.

We capture the data through our formal data requests and the data transfer takes place on a secured EY website. These are in line with our EY data protection policies which are designed to protect the confidentiality, integrity and availability of business and personal information.

Journal Entry Analysis

We obtain downloads of all the Council's financial ledger transactions posted in the year. We perform completeness analysis over the data, reconciling the sum of transactions to the movement in the trial balances and financial statements to ensure we have captured all data. Our analysers then review and sort transactions, allowing us to more effectively identify and test journals that we consider to be higher risk, as identified in our audit planning report.

Payroll Analysis

We also use our analysers in our payroll testing. We obtain all payroll transactions posted in the year from the payroll system and perform completeness analysis over the data, including reconciling the total amount to the General Ledger trial balance. We then analyse the data against a number of specifically designed procedures. These include analysis of payroll costs by month to identify any variances from established expectations, as well as more detailed transactional interrogation.



7 - Focused on your future

The Code of Practice on Local Authority Accounting in the United Kingdom introduces the application of new accounting standards in future years. The impact on the Council is summarised in the table below.

Standard	Issue	Impact
IFRS 9 Financial Instruments	<p>Applicable for local authority accounts from the 2018/19 financial year and will change:</p> <ul style="list-style-type: none"> ▶ How financial assets are classified and measured; ▶ How the impairment of financial assets are calculated; and ▶ The disclosure requirements for financial assets. <p>There are transitional arrangements within the standard and the 2018/19 Accounting Code of Practice for Local Authorities has now been issued, providing guidance on the application of IFRS 9. In advance of the Guidance Notes being issued, CIPFA have issued some provisional information providing detail on the impact on local authority accounting of IFRS 9, however the key outstanding issue is whether any accounting statutory overrides will be introduced to mitigate any impact.</p>	<p>Although the Code has now been issued, providing guidance on the application of the standard, along with other provisional information issued by CIPFA on the approach to adopting IFRS 9, until the Guidance Notes are issued and any statutory overrides are confirmed there remains some uncertainty. However, what is clear is that the Council will have to:</p> <ul style="list-style-type: none"> ▶ Reclassify existing financial instrument assets ▶ Re-measure and recalculate potential impairments of those assets; and ▶ Prepare additional disclosure notes for material items.
IFRS 15 Revenue from Contracts with Customers	<p>Applicable for local authority accounts from the 2018/19 financial year. This new standard deals with accounting for all contracts with customers except:</p> <ul style="list-style-type: none"> ▶ Leases; ▶ Financial instruments; ▶ Insurance contracts; and ▶ For local authorities; Council Tax and NDR income. <p>The key requirements of the standard cover the identification of performance obligations under customer contracts and the linking of income to the meeting of those performance obligations.</p> <p>Now that the 2018/19 Accounting Code of Practice for Local Authorities has been issued it is becoming clear what the impact on local authority accounting will be. As the vast majority of revenue streams of Local Authorities fall outside the scope of IFRS 15, the impact of this standard is likely to be limited.</p>	<p>As with IFRS 9, some provisional information on the approach to adopting IFRS 15 has been issued by CIPFA in advance of the Guidance Notes. Now that the Code has been issued, initial views have been confirmed; that due to the revenue streams of Local Authorities the impact of this standard is likely to be limited.</p> <p>The standard is far more likely to impact on Local Authority Trading Companies who will have material revenue streams arising from contracts with customers. The Council will need to consider the impact of this on their own group accounts when that trading company is consolidated.</p>



7 - Focused on your future (cont'd)

Standard	Issue	Impact
IFRS 16 Leases	<p>It is currently proposed that IFRS 16 will be applicable for local authority accounts from the 2019/20 financial year.</p> <p>Whilst the definition of a lease remains similar to the current leasing standard; IAS 17, for local authorities who lease a large number of assets the new standard will have a significant impact, with nearly all current leases being included on the balance sheet.</p> <p>There are transitional arrangements within the standard and although the 2019/20 Accounting Code of Practice for Local Authorities has yet to be issued, CIPFA have issued some limited provisional information which begins to clarify what the impact on local authority accounting will be. Whether any accounting statutory overrides will be introduced to mitigate any impact remains an outstanding issue.</p>	<p>Until the 2019/20 Accounting Code is issued and any statutory overrides are confirmed there remains some uncertainty in this area.</p> <p>However, what is clear is that the Council will need to undertake a detailed exercise to identify all of its leases and capture the relevant information for them. The Council must therefore ensure that all lease arrangements are fully documented.</p>

8 - Audit Fees

Our fee for 2017/18 is in line with the scale fee set by the PSAA and reported in our 25 July 2018 Audit Results Report.

	Final Fee 2017/18	Planned Fee 2017/18	Scale Fee 2017/18	Final Fee 2016/17
	£	£	£	£
Total Audit Fee - Code work	116,398*	109,958	109,958	109,958*
Total Audit Fee - Pension Fund	26,396**	24,108	24,108	24,108
Fee for IAS 19 work	5,500	5,500	N/a	5,500
Fee for objections	TBC***	0	N/a	0
Certifications - Teachers Pensions	TBC	£12,000	N/a	£12,000
Total Fees	TBC	£151,566	£134,066	£151,566

The audit fee covers the:

- ▶ Audit of the financial statements
- ▶ Value for money conclusion
- ▶ Whole of Government accounts.

We confirm we have not undertaken any other non-audit that has not been detailed above.

For Oxfordshire County Council our planned fee was set at the scale fee level. This planned fee was based on certain assumptions, including:

- ▶ The overall level of risk in relation to the audit of the financial statements is not significantly different from that of the prior year;
- ▶ Officers meeting the agreed timetable of deliverables;
- ▶ The operating effectiveness of the internal controls for the key processes identified within our audit strategy;
- ▶ Our accounts opinion and value for money conclusion being unqualified;
- ▶ Appropriate quality of documentation is provided by the Authority;
- ▶ There is an effective control environment; and
- ▶ Prompt responses are provided to our draft reports.

* We propose to charge an additional fee of £6,440 for the Oxfordshire County Council audit in as a result of:

- ▶ The involvement of EY experts in revisiting the valuation of the Museum and the accounting treatment for Service Concessions (£1,294)
- ▶ Additional procedures being performed to gain assurances over the significant value for money risk (£3,039)
- ▶ Issues in obtaining appropriate analytics information for the general ledger, where the Council provided incomplete information. This resulted in the tool needing to be re-run. (£783)
- ▶ Consideration of correspondence from the public (£1,324)

** We propose to charge an additional fee of £2,288 for the Oxfordshire Pension Fund audit in as a result of:

- ▶ Additional work undertaken in respect of the change in custodian (£1,672)
- ▶ Issues in obtaining appropriate analytics information for the general ledger, where the Council provided incomplete information. This resulted in the tool needing to be re-run (£616)

*** The work in relation to considering and responding to the objections is not included within the scale fee set by PSAA. The work to consider the objections is ongoing and the fee will be reported when the work is complete.

Any additional fees are also subject to review and agreement by PSAA Limited.

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Division(s): N/A

**AUDIT & GOVERNANCE COMMITTEE
12 SEPTEMBER 2018**

**Joint Working Arrangements Between
Oxfordshire County Council & Cherwell District Council:
Governance Arrangements**

Report by Director of Law & Governance

Introduction

1. Cabinet agreed on 4 June 2018 to approve, in principle, a joint working arrangement with Cherwell District Council. Cherwell formally made the same decision in July. These arrangements are governed by a formal "Section 113 Agreement" (see Annex 1). That Agreement included the appointment of a joint Chief Executive and statutory Head of Paid Service, which was undertaken through the Council's normal constitutional processes, including a recommendation from the Remuneration Committee and final approval by Full Council on 10 July 2018.
2. Section 113 of the Local Government Act 1972 enables local authorities to enter into agreements with one another for the placing at the disposal of each other their respective officers for carrying out their respective functions.
3. The Section 113 Agreement, now in place, establishes a structure to enable proposals for joint working to be approved with the necessary Member oversight. Each proposal will need approval by each separate Authority.
4. These new arrangements clearly have an impact on the way in which the County Council undertakes its business and indeed constitutional changes are required in order to ensure good governance is maintained.
5. Consequently, this report brings the suite of relevant governance arrangements to this Committee so that it can assure itself of the sufficiency and effectiveness of these governance arrangements underpinning the joint working arrangements.
6. The principal issues for consideration by the Audit & Governance Committee are:
 - i. To note the agreed Section 113 Agreement (Annex 1);
 - ii. To note the Terms of Reference of the Partnership Working Group (Annex 2)
 - iii. To consider and approve the Terms of Reference of the Joint Personnel Committee and Joint Appeals Committee – which Council on 11 September was due to establish. It is expected that Council will have delegated approval of the Terms of Reference to this Committee. (Annex 2)

- iv. To review and endorse the following protocols (Annex 3):
 - a. 'Roles of Members and Officers and Dealing with Conflicts of Interest Protocol' – including the Ethical Walls Procedures
 - b. 'Chief Executive Protocol'
- 7. Each of these governance provisions is explained further within this report.

Section 113 Agreement

- 8. In deciding to enter into partnership working with Cherwell District Council, Cabinet also delegated to the Monitoring Officer the responsibility for finalising, with Cherwell District Council, a Section 113 Agreement which would articulate the agreement between the two Authorities.
- 9. A Section 113 Agreement is made under Section 113 of the Local Government Act 1972 which says that a local authority may enter into an agreement with another local authority for placing at the disposal of the latter the service of its officers.
- 10. The concluded Section 113 Agreement is attached as Annex 1. The Committee is asked to note the Agreement and the governance implications of it, setting out, as it does, the nature of the agreement between the two Authorities including the intention to establish an informal Partnership Working Group to generate proposals to be approved by both Authorities. The Agreement envisages a Shared Senior Management Team and the achievement of proposals for joint working.

Partnership Working Group

- 11. It is envisaged that the Partnership Working Group will be made up of 5 members from each Authority and will be, at least initially, an informal body. As such, it is not a requirement that this Group is politically proportional. The Partnership Working Group, under the Section 113 Agreement, will be charged with recommending proposals for joint working to the respective councils, which in this Council's case will be to Cabinet. The Terms of Reference for it have been included in Annex 2 for information.

Joint Personnel Committee and Joint Appeals Committee

- 12. The Section 113 Agreement recognises that once the Authorities have agreed a proposal, for example, for joint management arrangements, there may be staffing issues for both Authorities that arise. As such, as envisaged in the Section 113 Agreement, Full Council is being asked on 11 September to establish two joint committees – a Joint Personnel Committee and a Joint Appeals Committee.
- 13. Full Council is also being asked to delegate the decision on the final terms of reference of these committees to this Committee. The **draft** terms of reference are included within Annex 2 to this report. The Joint Committees provide an efficient way of addressing the staff issues that may flow from any

proposals. Similar arrangements operated between Cherwell District Council and South Northamptonshire District Council and were effective.

Joint Personnel Committee

14. The Joint Committee would effectively act as our current Remuneration Committee with regard to decisions on terms and conditions, pay, redundancy payments etc. for staff directly affected by the incremental implementation of the partnership proposals. The Joint Personnel Committee would be comprised of three members from each council. As it is intended that the Joint Committee would have executive as well as non-executive functions, at least one member would need to be an executive member. However, as a Committee of the Council, the Joint Committee would still operate under the rules of political proportionality.
15. In the first instance, it is envisaged that the Joint Personnel Committee would look specifically at the statutory roles in terms of joint arrangements and would also be the body to address any issues to do with disciplinary matters.

Joint Appeals Committee

16. The Joint Appeals Committee would then be placed to hear any appeals by way of grievance or disciplinary concerns arising from decisions of the Joint Personnel Committee.
17. As such, the Committee is asked to consider and approve terms of reference for the Joint Personnel and Joint Appeals Committees.
18. Appointments to these bodies are likely to be made by the Monitoring Officer under his delegated authority to give effect to the wishes of Political Group Leaders in respect of politically proportionality. Full Council on 11 September is considering asking the Monitoring Officer to do this.

Protocol – Roles of Members/Officers and Dealing with Conflicts of Interest: An Ethical Walls Procedure

19. Under the joint arrangements with Cherwell District Council, whilst the officers of both Councils will be managed under one Joint Chief Executive, the two Authorities remain two distinct local authorities with different memberships and political priorities. It is perhaps inevitable that conflicts of interest between the two Authorities will arise. For example, a conflict could arise in an operational issue (such as a fire safety concern about a Cherwell District Council property; or an environmental health issue for a maintained school) or in the strategic approach to an issue (such as a differing view about any proposed corridor to the expressway).
20. It is important that both members and officers are alive to those potential conflicts and vigilant in managing them. An effective conflict of interest protocol has been in place with the arrangements between Cherwell District

Council and South Northamptonshire District Council alongside, and what is known as, an Ethical Walls policy.

21. It is proposed, and envisaged under the Section 113 Agreement, that such an arrangement should largely be replicated between the two Authorities. It is intended that this would be incorporated into the Council's Constitution, and would relate to the roles of members and officers in dealing with conflicts of interest, together with a detailed procedure and a guide to establishing Ethical Walls.
22. A **draft** protocol on 'Roles of Members and Officers and Dealing with Conflicts of Interest' is attached at Annex 3. This includes a draft 'Ethical Walls Procedure'.
23. It is anticipated that there will be rare occasions where it is not possible to reconcile the interests of two Authorities with their respective legal responsibilities. The Ethical Walls Procedure sets out a framework within which such a conflict would be managed. In short, it would involve the Monitoring Officer alerting all the relevant officers (pertinent to the issue in question), ring-fencing them and then establishing to which local authority they will report over the particular issue. Those officers would be instructed to liaise with the other officers on the basis that they are working with *a separate party*. This will ensure that, in practice, officers will only be advising members and officers on their side of the Wall. Similarly reports to formal meetings of the authority Committees will reflect the arrangements.
24. At the last meeting of this Committee, members expressed the view that the *Policy on Roles of Members/Officers and Dealing with Conflicts of Interest* should address the issue of dual-hatted councillors i.e. those who serve on both Cherwell District and Oxfordshire County Councils. A paragraph to address this has been added to page 2 of the Policy (in Annex 3).
25. The arrangements would be overseen by the Monitoring Officer and ultimately the Joint Chief Executive who will seek to address any issues that might arise from the conflict.
26. It is suggested that Audit & Governance Committee would receive regular reports on the Ethical Walls that are in place from time to time and any of issues that arise from them.

Protocol – 'Chief Executive Protocol'

27. It is intended that a 'Chief Executive Protocol' should set out the status of the Joint Chief Executive, how the Joint Chief Executive will work effectively on behalf of both authorities and provisions as to that person's appraisal process. It would set out which responsibilities remain with Cherwell District Council (as employer) and which will be undertaken jointly.
28. A **draft** 'Chief Executive Protocol' is attached for this Committee's approval at Annex 3.

Legal and financial implications

29. There are no financial implications arising from the decisions in this report.

30. The Joint Committees, if Council establishes them, would be established under Section 101(5) of the Local Government Act 1972 and in accordance with The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.

Recommendation:

31. The Committee is RECOMMENDED to:

- a) To note the agreed Section 113 Agreement (Annex 1);**
- b) To note the agreed Terms of Reference for the Partnership Working Group (at Annex 2);**
- c) To consider and approve Terms of Reference for the Joint Personnel Committee and the Joint Appeals Committee (at Annex 2);**
- d) To note and endorse the 'Roles of Members and Officers and Dealing with Conflicts of Interest' Protocol (including the Ethical Walls Procedure appended to it) (Annex 3);**
- e) To note and endorse the 'Chief Executive Protocol' at Annex 3 of this report;**
- f) To agree regularly to monitor the operation of the 'Roles of Members and Officers and Dealing with Conflicts of Interest' Protocol (including the Ethical Walls Procedure appended to it) as at Annex 3 of this report;**
- g) To delegate authority to the Monitoring Officer to make any further minor adjustments to these documents and to make the necessary changes to the Council's Constitution.**

**Nick Graham
Director of Law & Governance
September 2018**

Contact Officer: Nick Graham
01865 323910

September 2017

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DATED day of 2018

Agreement
between
(1) Cherwell District Council
and
(2) Oxfordshire County Council

An inter authority agreement under section 113 of the Local Government Act 1972 for the sharing of a Chief Executive (Head of Paid Service) and arrangements for exploring closer collaboration between the councils including potential employment by the Councils of a shared senior management team, and the identification of potential areas of joint service delivery and for the placing at the disposal of the one Council of officers employed by the other for the purposes of their functions

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THIS AGREEMENT is made on the 31st day of August 2018
BETWEEN

- (1) Cherwell District Council whose principal office is at Bodicote House
Bodicote Banbury Oxfordshire OX15 4AA (“Cherwell”)

and

- (2) Oxfordshire County Council whose principal office is at County Hall, Oxford
OX1 1ND (“Oxfordshire”)

1. Background

- 1.1 Section 113 (1) of the Local Government Act 1972 provides that a local authority may enter into an agreement with another local authority for the placing at the disposal of the latter for the purposes of their functions, on such terms as may be provided by the agreement, of the services of officers employed by the former.
- 1.2 At their respective Executive and Cabinet meetings on 4 June 2018 and the Councils decided by various resolutions to appoint a shared Chief Executive and explore the creation of a shared senior management team for Cherwell District Council and Oxfordshire County Council including the appointment of a joint Chief Executive.1.3

NOW IT IS HEREBY AGREED as follows

2. Definitions

In this Agreement the following terms shall have the following meanings

Term	Meaning
Chief Executive	the Head of Paid Service of the Councils, initially to be appointed pursuant to sub clause 5.1
Clause	a Clause in this Agreement
Commencement Date	[the date hereof]
Council	Cherwell or Oxfordshire as the case may be
Councils	both Cherwell and Oxfordshire
Executive Arrangements	shall be construed in accordance with Part II of the Local Government Act 2000
Expenses	shall be interpreted in accordance with Clause 6
Intellectual Property Rights	all rights available for the protection of any discovery invention name design process or work in which copyright or any rights in the nature of copyright subsist and all patents copyrights registered designs design rights trademarks service marks and other forms of protection from time to time subsisting in relation to the same including the right to apply for any such protection and trade secrets and other unpublished information

The Partnership Working Group	the Joint Partnership Working Group established by the Executive at Cherwell and the Cabinet at Oxfordshire on 4 June 2018 to explore the creation of a shared management team and possible areas of shared services
The Joint Committees	The Partnership Working Group and any Joint committees which are established pursuant to this agreement.
Legal Adviser	the Assistant Director Law and Governance of Cherwell and the Director of Law and Governance of Oxfordshire
Monitoring Officer	the officer or officers appointed under section 5 of the Local Government and Housing Act 1989
Senior Officers	the Senior Officers employed within the Shared Senior Management Team
Shared Senior Management Team	the Shared Senior Management Team as may be established in accordance with Clause 5
Shared Services	any service which the Councils decide to provide jointly in accordance with sub-clause 5.2 below
Section 151 Officer	the officer appointed under Section 151 of the Local Government Act 1972

3. Preliminary

3.1 This Agreement is made pursuant to

- (a) Sections 101 and 102 of the Local Government Act 1972 (delegation to joint committees);
- (b) Section 112 of the Local Government Act 1972 (duty to appoint officers);
- (c) Section 113 of the Local Government Act 1972 (power to place staff at the disposal of other local authorities);
- (d) Section 3 of the Local Government Act 1999 (duty to secure best value);
- (e) Section 2 of the Local Government Act 2000 (power to promote economic social and environmental wellbeing)

- (f) Sections 9EA, 9EB, 14 and 20 of the Local Government Act 2000 and The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000/2851 (joint arrangements for the exercise of executive functions)
- (g) Section 1 Localism Act 2011

and all other enabling powers.

3.2 This Agreement has been entered into by the Councils by virtue of the resolution of the Councils of the 10 July 2018 (Oxfordshire) and 16 July 2018 (Cherwell).

3.3 This Agreement shall commence on the Commencement Date and shall only be terminated pursuant to the provisions of Clause 7.

4. Governance Arrangements

4.1 The Councils have established a Partnership Working Group.

4.2 The Partnership Working Group shall not be a formal joint committee within the meaning of the Local Government Acts unless and until resolved otherwise. It shall have the terms of reference agreed by the Assistant Director Law and Governance in consultation with the Leader at Cherwell and the Director Law and Governance in consultation with the Leader at Oxfordshire on 31 August 2018

4.3 The Councils shall establish such formal joint committees to facilitate joint appointments working as agreed by the two councils on the recommendation of the Partnership Working Group.

4.4 The governance of joint working arrangements shall be serviced by officers as agreed in writing between the Councils and where there is any conflict with the terms of this Agreement then this Agreement shall prevail. The ongoing arrangements for the management and administration of the Joint Committees will be considered as part of the first review referred to in sub-clause 7.9 below.

4.5 Notwithstanding Clause 6 (Expenses) below each Council shall meet any cost that they incur arising from meetings of the Joint Committees.

4.6 The Joint Committees shall take into account advice from the Statutory Officers, Senior Officers and officers of the Councils.

4.7 The Partnership Working Group shall meet on at least four occasions a year. One of those meetings shall be scheduled to ensure that any proposed salary budgets can be properly and fully considered by each of the Councils as part of their respective budget-making processes.

4.12 Where decisions are taken by such Joint Committees as are established the following principles and conditions shall apply:

- (a) the Joint Committees shall have proper regard to any relevant resolution of one Council provided that such resolution is not to the detriment of the other Council;

- (b) the Joint Committees shall satisfy themselves that any inter Council consultation has been carried out;
 - (c) the taking of decisions shall be subject to there being appropriate and adequate budgetary provision by the Councils;
 - (d) any decision which could have legal implications shall be taken in consultation with the respective Legal Adviser;
 - (e) any decision which could have financial implications shall be taken in consultation with the Section 151 Officer;
 - (f) any decision which could involve the exercise by the Monitoring Officer of any of his or her powers shall be taken in consultation with him or her or in his or her absence the Deputy Monitoring Officer.
- 4.13 Such Joint Committees shall not be bodies corporate or have the functions of acquiring or holding assets employing staff or entering into contracts.

5. The Shared Senior Management Team, Shared Staff and the application of section 113 of the Local Government Act 1972

- 5.1 The Councils will, in the Partnership Working Group, consider the possibility of establishing a Shared Senior Management Team and shared services. Senior Officers shall be statutory non-statutory or deputy chief officers within the meaning of section 2 of the Local Government and Housing Act 1989 PROVIDED ALWAYS that the Councils may also appoint deputy chief officers who are not members of the Shared Senior Management Team. The Partnership Working Group will report to each Council on its findings and recommendations in relation to the establishment of a Shared Senior Management Team no later than six months after the date hereof.
- 5.2 The Councils will, in the Partnership Working Group, consider the possibility, on a service by service basis, of joint working by the Councils.
- 5.3 As part of any such proposed arrangements referred to in sub-clauses 5.1 and 5.2 above, the Senior Officers and any officers employed in relation to the relevant Shared Services may be employed by either one of the Councils and having been so employed shall forthwith be placed at the disposal of the Council who is not their employer.
- 5.3 For superannuation purposes service rendered by an officer of one of the Councils whose services are placed at the disposal of the other in pursuance of section 113 of the Local Government Act 1972 and hence in pursuance of this Agreement is service rendered to the Council by whom he is employed but any such officer shall be treated for the purposes of any enactment relating to the discharge of functions as an officer of the other Council and Senior Officers may act and shall have powers to act under the constitutions of the Councils.
- 5.4 The Senior Officers shall divide their time fairly and reasonably between the Councils and shall not show bias towards one Council vis-à-vis the other. The Chief Executive will use reasonable endeavours to achieve in as timely a way

as is practicable a position where each Senior Officer's time is divided between the Councils in accordance with the proposals of the Partnership Working Group.

- 5.5 The Chief Executive shall be the shared Head of Paid Service in respect of the workforce of the Councils. Where the Chief Executive is employed by one Council and, in accordance with sub-clause 5.3, is placed at the disposal of the other Council, the non-employing Council shall, six months after the Chief Executive's appointment as chief executive and Head of Paid Service of the non-employing Council, having reviewed the arrangements, have the option, exercisable at its sole discretion, to bring such arrangement to an end so that the Chief Executive shall revert to simply being the chief executive of the employing Council. Such option shall be exercised by service of written notice on the employing Council and shall take effect immediately upon receipt.
- 5.6 The councils shall establish protocols to deal with (1) conflicts of interests of individual officers in the Shared Senior Management Team and (2) the roles of individual officers in the Shared Senior Management Team in providing advice to the Councils jointly and separately (3) Chief Executive and (4) Data Sharing by no later than six months after the Commencement Date.

6. Expenses

- 6.1 The one-off costs including redundancy and associated pension costs, arising from the creation of the Shared Senior Management Team and any Shared Service shall be apportioned in such ratio as may be agreed by the Councils on the recommendation of the Partnership Working Group and which reflects the maximum financial risk to which each Council is exposed.
- 6.2 The salary costs, on-costs, superannuation, training, travel, benefits payable to employees or dependents, professional fees, payments to third parties, support costs, development or welfare costs and incidental costs of the Shared Senior Management Team, any Shared Service and the costs incurred in managing the Joint Committees shall be apportioned in such ratio as may be agreed by the Councils on the recommendation of the Partnership Working Group.
- 6.3 The Section 151 Officers shall account to each of the Councils annually regarding the expenses of the Shared Senior Management Team and the Shared Services by not later than 30 June following the end of the relevant financial year and shall render valid VAT invoices accordingly.
- 6.4 Costs incurred in the event of termination shall be apportioned in accordance with Clause 7 below.

7. Termination and Review

- 7.1 This Agreement shall continue unless terminated in accordance with this Clause 7 PROVIDED ALWAYS THAT the provisions of this Clause 7 shall be subject to any other provision of this Agreement extending financial liability beyond termination.
- 7.2 Subject always to the other sub paragraphs of this Clause 7 this Agreement may be terminated either:

- (a) unilaterally by one Council: or
- (b) by agreement by both Councils on the recommendation of one of the Joint Committees.
- 7.3 Where one of the Councils proposes to withdraw from the Agreement pursuant to Clause 7.2(a) for whatever reason that Council shall invoke the informal dispute resolution process set out in Clause 10. If that informal process is not successful the Council wishing to withdraw shall prepare a report to the Partnership Working Group setting out its reasons. If the Partnership Working Group acting reasonably cannot remedy the problem and such remedy may include invoking Clause 10 (Dispute Resolution) below within a reasonable time to the reasonable satisfaction of the Council proposing to withdraw then the Council proposing to withdraw shall be at liberty acting always under its constitution to withdraw from this Agreement.
- 7.4. Where the reasons for the proposed withdrawal involve a proposal by an employing Council to suspend dismiss or discipline a Senior Officer and either the Joint Personnel Committee or the Joint Appeals Committee or both of them acting reasonably cannot remedy the problem within a reasonable time to the reasonable satisfaction of the Council proposing to withdraw and such remedy may include invoking Clause 10 (Dispute Resolution) below then the employing Council shall be at liberty acting always under its constitution to suspend dismiss or discipline and withdraw from this Agreement.
- 7.5 Where the reasons for the proposed withdrawal involve a proposal by a Council to suspend dismiss or discipline a particular member of the other Council's staff and the Partnership Working Group acting reasonably cannot remedy the problem within a reasonable time to the reasonable satisfaction of the Council proposing to withdraw and such remedy may include invoking Clause 10 (Dispute Resolution) then the Council so proposing shall be at liberty acting always under its constitution to withdraw from this Agreement.
- 7.6 Where either of the Councils terminates or withdraws from this Agreement it shall do so by giving to the other not less than six months' prior written notice. Provided that either Council may take measures with immediate effect pursuant to a decision of its full Council in circumstances of sudden significant strategic change such that immediate arrangements need to be made to resolve conflicts of interest within the Shared Senior Management Team.
- 7.7 In the event of a termination for any reason the Councils shall:
- (a) co-operate in terminating modifying restructuring assigning or novating contractual arrangements entered into to mutual advantage and properly and timeously execute any documents necessary;
 - (b) use best endeavours to secure an amicable financial settlement;
 - (c) immediately transfer or return any property including data belonging to the other Council;
 - (d) ensure that staff return to their employing authority and through best endeavours each Council is allocated a fair and reasonable proportion of the members of the shared staff subject to any necessary actions being taken as required by employment law or

by the policies of the transferring council so that (1) each Council can maintain continuity in the provision of its services at the same level of effectiveness and efficiency as if this Agreement had not been terminated and (2) they become employed by the Council to which they are transferred.

- 7.8 In the event of a termination however and whenever occurring the costs consequential upon such termination including costs of recruitment selection administration but not salary costs after the date of termination shall be apportioned equally between the Councils and each Council shall indemnify and keep indemnified the other Council in respect of that Council's share from and against any actions and causes of action claims demands proceedings damages losses costs charges and expenses whatsoever arising from or in connection with such early termination or withdrawal and such indemnity shall continue after the termination of this Agreement.
- 7.9 The Councils may review and seek to amend this Agreement from time to time and in any event shall carry out a review as to the efficacy and relevance of its terms after the first anniversary of the Commencement Date and any changes agreed shall come into effect on the second anniversary of the Commencement Date. Thereafter the Councils shall carry out further reviews at least every five years unless otherwise agreed with the date of the next following review being fixed as part of the initial review referred to above. All changes arising upon such reviews shall only take effect upon the completion and sealing of a formal amending Agreement.
- 7.10 No deletion, addition or modification to this Agreement shall be valid unless agreed in writing and sealed by the Councils.

8. Chief Executive: Application of section 4 of the Local Government and Housing Act 1989

- 8.1 The Councils shall provide the Chief Executive with such staff accommodation and other resources as are in his or her opinion sufficient to allow his or her duties to be performed.
- 8.2 It shall be the duty of the Chief Executive where he or she considers it appropriate to do so in respect of any proposals of his or hers with respect to any of the matters specified in Clause 8.3 below to prepare a report to either one or both of the Councils setting out his or her proposals.
- 8.3. These matters are:
- (a) the manner in which the discharge by either one or both of the Councils of their different functions is co-ordinated;
 - (b) the number and grades of staff required by the Councils for the discharge of their functions;
 - (c) the organisation of the staff of the Councils; and
 - (d) the appointment and proper management of the staff of the Councils.
- 8.4 It shall be the duty of the Chief Executive as soon as practicable after he or she has prepared such a report to arrange for a copy of it to be sent to each member of either one or both of the Councils as appropriate.

- 8.5 It shall be the duty of each of the Councils separately to consider any such report by the Chief Executive at a meeting held not more than three months after copies of the report are first sent to members of one or both of the Councils.
- 8.7 Any replacement Chief Executive will be appointed Head of Paid Service by the Councils at their respective meetings on such dates as may be resolved by the Councils

9. Chief Executive: Supplementary

- 9.1 Without prejudice to Clause 8 above it shall be the duty of the Chief Executive to ensure that all members (and non-Executive members in particular) have such access to and support from all officers of their Council and in particular to the Chief Executive and Shared Senior Management Team as they may reasonably expect.
- 9.2 Without prejudice to Clause 8 above the duties of the Chief Executive shall include advising any Joint Committees and the respective Executive and Cabinet of each Council in respect of executive functions within the meaning of the Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended) or the full Council or relevant committee of each Council in respect of non-executive functions within the meaning of the said regulations and the duty of the Chief Executive to advise the Councils shall include but not be limited to providing advice on:
- (a) The structure of the Shared Senior Management Team of the Councils;
 - (b) The host employer for each post;
 - (c) Performance management of the Shared Senior Management Team.

10. Dispute Resolution

- 10.1 In the event of a dispute concerning the construction or effect of this Agreement and/or one of the Councils is proposing to withdraw from this Agreement there shall initially be an informal dispute resolution process which involves reference of the matter to the respective Leaders of the Council (or Deputy Leaders in the absence of the Leader) who shall meet to try and resolve the dispute within fifteen working days of the referral. If such informal dispute resolution is unsuccessful then the dispute will be referred to the Partnership Working Group which will consider whether to make recommendations to each Council and the matter may be referred by the Partnership Working Group to the respective Leaders (or Deputy Leaders in absence) of the Councils in consultation with the Chief Executive and such other Senior Officers as are appropriate who shall take all reasonable steps to conciliate and resolve such dispute or difference whether by negotiation, mediation or any other form of dispute resolution procedures (with a view to resolution by discussion and negotiation).
- 10.2 In the event that a matter in dispute cannot be resolved under Clause 10.1 above the matter may be referred to an arbitrator under Clause 10.3 below.
- 10.3 The arbitrator shall be appointed with the agreement of the Councils or in the

event that agreement cannot be reached by the President or other chief officer of The Chartered Institute of Arbitrators or such other professional body appropriate to the matter in dispute (such body to be determined by the Chief Executive).

- 10.4 The resolution of unresolved disputes in respect of the expenses of any Joint Committee to which section 103(b) the Local Government Act 1972 applies shall be determined in accordance with that section by a single arbitrator agreed on by the Councils or in default of agreement appointed by the Secretary of State.
- 10.5 For the avoidance of doubt this Clause shall remain in effect after the termination of this Agreement to confer powers on the Councils to resolve matters remaining in dispute.

11. No Fetter of Discretion

- 11.1 Nothing in this Agreement shall fetter the discretion of the Councils.

12. Liabilities

- 12.1 The Councils shall be jointly and severally liable to any third parties in respect of all actions and causes of action claims demands proceedings damages losses costs charges and expenses directly arising from this Agreement.

Each Council shall indemnify and keep indemnified the other Council from and against the extent of the indemnifying Council's liability for any actions and causes of action claims demands proceedings damages losses costs charges and expenses directly arising from or in connection with this Agreement and such liability and indemnity shall continue after the termination of this Agreement.

- 12.2 Each Council shall ensure that it has all appropriate insurances relating to public liability employee liability professional indemnity and Member indemnity to cover any liabilities arising under this Agreement. The Councils will use their reasonable endeavours to ensure that their respective insurance arrangements are mutually comparable as soon after the Commencement Date as practicable.
- 12.3 Each Council shall notify its insurer or insurers of the fact that it has entered into the Agreement and shall pay such adjusted premiums as arise therefrom to ensure continuation of its prior insurance cover.
- 12.4 Any shared employees shall have statutory immunity from liability in accordance with section 39 of Local Government (Miscellaneous Provisions) Act 1976 and shall be indemnified from the general fund provided that the employee acts bona fide in the interests of the councils and does not act (nor omit to act or deliberately fail to act) in a manner that is objectively reckless, negligent or criminal.

13. Intellectual Property Rights

- 13.1 Each Council shall remain the owner of all intellectual property rights it owns at the date of this Agreement in any materials which it has created or the creation of which was undertaken by a third party which it commissioned to create those materials.

- 13.2 Any new material created jointly by the Councils in the course of provision of the Shared Senior Management Team shall belong to the Councils jointly.
- 13.3 Each Council hereby grants a licence to the other to use its intellectual property rights incorporated in or appearing from the materials referred to in clauses 13.1 and 13.2 for the purposes of the performance of this Agreement.

14. Notices

- 14.1 Any notice to be served under this Agreement shall be valid and effective if it is addressed to the Chief Executive and delivered by e-mail fax prepaid recorded delivery post or delivered by hand to the other Council's principal office.

15. Rights and Duties Reserved

- 15.1 Nothing in this Agreement shall prejudice or fetter the proper exercise of any function by the Councils or their officers.

16. Legal and other Fees

- 16.1 Each Council shall bear its own legal and other fees in relation to the preparation and completion of this Agreement.

17. Provision of Relevant Information

- 17.1 Each Council shall make available to the other such information which each Council may from time to time reasonably require which is relevant to and/or improves the efficacy of this Agreement.
- 17.2 Without prejudice to any provision in this Agreement requiring the keeping of records the supply of statistics or the provision of information the Councils shall keep such other records and details of or concerning the Shared Senior Management Team or their performance as the Councils may require and shall produce or provide to the other copies whether kept electronically or in paper format of such accounts invoices orders contracts receipts statistics and other information or documents touching or concerning or arising from this Agreement or their performance under this Agreement when and in such form as each Council may reasonably require.
- 17.3 Without prejudice to any provision in this Agreement the Councils shall keep and maintain all necessary information and shall provide all necessary assistance to enable each Council to complete all necessary official returns or statistics related to this Agreement.
- 17.4 The Councils shall supply each other with such assistance and information as each Council may require to enable it to allocate such expenditure as each Council may incur under this Agreement.

18. Audit

- 18.1 Each Council's external and internal auditors (whether in house or outsourced) shall have in respect of the other Council the like powers set out

in Part II of the Audit Commission Act 1998 in so far as their exercise is relevant to this Agreement. Each Council shall at all reasonable times (including following the termination for whatever reason of this Agreement) allow or procure for any auditor for the purposes of an external or internal audit immediate access to and permission to copy and remove any copies of and permission to remove the originals of any books records and information in the possession or control of either Council which in any way relates to or are or were used in connection with this Agreement including (but without limitation) any of each Council's data and any such information stored on a computer system operated by a contractor servant or agent of the other Council.

- 18.2 Each Council will provide all practicable co-operation and afford all appropriate access to personnel and records in order to assist the requesting Council in carrying out any investigations which are already under way at the Commencement Date and to which this Agreement is relevant and any investigations which are carried out after the termination of this Agreement to which it is relevant.

19. Partnership

- 19.1 Nothing in this Agreement shall be construed as establishing or implying any legal partnership or joint venture between the Councils.

20. Anti-Corruption

- 20.1 Either Council may cancel this Agreement at any time and recover from the other the amount of any loss resulting from such cancellation if any of the following apply:-
- (a) the other Council has offered or given or agreed to give to any person any gift or consideration as an inducement or reward (1) for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Agreement or any other contract with the Council (2) for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other contract with the Council;
 - (b) any person employed by or acting on behalf of the other Council (whether with or without the other Council's knowledge or consent) acts in a similar manner to that set out in sub Clause (a) above;
 - (c) in relation to any contract or potential contract with the Council the other Council or any person employed by or acting on behalf of the other Council shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment or replacement of them or shall have given any fee or reward the receipt of which is an offence under Sub Section (2) of Section 117 of the Local Government Act 1972.

21. Discrimination

- 21.1 The Councils shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 and any other legislation prohibiting discrimination on any grounds whatsoever. The Councils shall take all reasonable steps to secure the observance of these provisions and any

statutory provisions amending or replacing the same by its employees in the performance of the Agreement. The Councils shall indemnify and or keep indemnified each other against all actions and causes of action claims demands proceedings damages losses costs charges and expenses whatsoever in respect of any breach by the one Council of this Clause and such indemnity shall continue after the termination of this Agreement.

22. Human Rights

22.1 The Councils in the performance of this Agreement shall comply with the provisions of the Human Rights Act 1998 in all respects as if the Joint Committees were public bodies within the meaning of the Act. The Councils shall indemnify and or keep indemnified each other against all actions and causes of action claims demands proceedings damages losses costs charges and expenses whatsoever in respect of any breach by the one Council of this Clause and such indemnity shall continue after the termination of this Agreement.

23. Freedom of Information, Data Protection and Confidential Information

23.1 It is agreed that the Councils are subject to the provisions of the Freedom of Information Act 2000 ("FoIA") and the Environmental Information Regulations 2004 ("EIRs"). Each Council shall cooperate with the other and supply to the other all information properly required in connection with any request received by a Council under the FoIA or EIRs except to the extent that in the disclosing Council's opinion such information is exempt from disclosure under the relevant legislation. Where a council receives a request for information under FoIA or the EIR which relates to this Agreement or a new proposal for a shared service it shall inform the other council of the request for information as soon as practicable after receipt.

23.2 In relation to all Personal Data, each council shall at all times comply with the Data Protection Legislation (as a Data Controller and/or Data Processor as necessary) in connection with this Agreement and any new proposals.

23.3 The councils shall (and shall procure that any of their respective personnel shall) in so far as it relates to the performance of their respective obligations under this Agreement:

23.3.1 adhere to all applicable provisions of the Data Protection Legislation

23.3.2 comply with any notification requirements under Data Protection Legislation

23.3.3 to the extent applicable duly observe all their obligations under the Data Protection Legislation which arise in connection with the Agreement

23.4 Notwithstanding the general obligation in 23.3 in respect of the councils rights and obligations under this agreement the councils acknowledge and agree that they are Data Controllers in respect of the Personal Data they hold for the purposes of the Agreement

23.5 Prior to the Commencement Date each council shall notify the other of the

name and contact details of that councils Data Protection Officer (as that term is understood by reference to the Data Protection Legislation). Each council shall promptly inform the other of any change in its Data Protection Officer.

23.6 The councils agree to provide such reasonable assistance as is necessary to each other to enable them to comply with the Data Protection Legislation and agree to enter into a Data Sharing Protocol.

23.7 The provisions of this Clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination or until all Personal Data is returned to the responsible Data Controller or destroyed on the responsible Data Controllers instruction.

23.8 Where any new proposal will include the processing of personal data and/or control of personal data then before such new proposal is agreed and finalized the councils must depending on the data sharing arrangements and the data sharing relationship under the new proposal undertake a Privacy Impact Assessment (PIA) where that processing is likely to result in a high risk to individuals interests (and in any other instance as a matter of good practice) prior to entering into an appropriate data protection agreement.

23.9 No council shall without the consent of the other (as appropriate depending upon the ownership of the confidential information) at any time during or after the term of this Agreement divulge or allow to be divulged to any person any confidential information relating to the business or affairs of the other council in relation to this Agreement any business plans or other collaboration pursuant to this agreement except as required by this Agreement, prior consent or by law.

24. Survival of this Agreement

24.1 In so far as any of the rights and powers of the Councils provided for in this Agreement shall or may be exercised or exercisable after the termination of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination.

24.2 In so far as any of the obligations of the Councils provided for in this Agreement remain to be discharged after the termination of this Agreement the provisions of this Agreement imposing such obligations shall survive and remain in full force and effect notwithstanding such termination.

25. Whole Agreement

25.1 This Agreement constitutes the whole agreement and understanding of the Councils as to its subject matter and there are no prior or contemporaneous agreements between the Councils.

26. Waiver

26.1 Failure by either Council at any time to enforce any provision of this Agreement

or to require performance by the other or others of any of the provisions of this Agreement shall not be construed as a waiver of any such provisions and shall not affect the validity of this Agreement or any part or the right of that party to enforce any terms and provision of this Agreement.

27. Severance

27.1 If any term or provision of this Agreement shall in whole or in part become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other term or provision all of which shall remain in full force and effect.

28. Headings

28.1 Headings contained in this Agreement are for reference purposes only and shall not affect the validity or construction of this Agreement.

29. Governing Law

29.1 This Agreement shall be governed by and interpreted in accordance with English law and the Councils submit to the exclusive jurisdiction of the English courts.

30. Contracts (Rights of Third Parties) Act 1999

30.1 The Councils do not intend that any term of this Agreement should be enforceable by any third party as provided by the Contracts (Rights of Third Parties) Act 1999.

31. Non-assignment

31.1 Neither of the Councils shall be entitled to assign this Agreement or any of its rights and obligations under it without the written consent of the other (which consent the other Council may in its absolute discretion withhold unless such assignment is being imposed by legislation) other than to a successor body following a reorganization that transfers functions to a body that substantially performs any of the functions previously performed by that council.

32. Disruption

32.1 The Councils shall take reasonable care to ensure that in the execution of this Agreement it does not disrupt the operations of the other Council its employees or any other third party.

33. Health and Safety

33.1 Each Council shall promptly notify the other of any health and safety hazards which may arise in connection with the performance of this Agreement and shall promptly notify each other of any health and safety hazards which may exist or arise at a Council's premises and which may affect the performance of this Agreement.

33.2 While on the Councils' premises, the Shared Senior Management Team shall comply with any health and safety measures implemented by the relevant

Council in respect of employees and other persons working on those premises.

33.3 Each Council shall notify the other immediately in the event of any incident occurring in the performance of this Agreement on the Council's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

33.4 The Councils shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on Council premises in the performance of this Agreement.

33.5 The Councils shall ensure that their health and safety policy statements (as required by the Health and Safety at Work etc Act 1974) are made available to each other on request.

IN WITNESS of which this Agreement has been executed as a Deed on the first day before written

EXECUTED AS A DEED by affixing The
Common Seal of Cherwell District
Council
in the presence of:

.....
Assistant Director Law and Governance/ Designated Officer

THE COMMON SEAL OF
OXFORDSHIRE COUNTY COUNCIL
Was hereunto affixed in the presence of:

.....
Director of Law and Governance/Designated Officer

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Terms of Reference – Partnership Working Group, Joint Personnel Committee and Joint Appeals Committee

Preamble

- 1.1 The councils shall act at all times in a way that promotes effective collaborative working. In particular, each, council will:
- work in good faith with the other council towards the mutual advantage of the councils and to explore opportunities and develop them into New Proposals where appropriate;
 - co-operate as appropriate, seeking improvement and efficiencies in relevant policies, procedures and structures where economic and effective (and, for the avoidance of doubt where to do so would not fetter the discretion and political will of a council), to meet the requirements of their Best Value Duty;
 - provide such reasonable information (as may be determined by the council from whom the information is sought) to each of the other councils in a form that is readily usable and in a full and timely manner. Relevant information shall include, without restriction or limitation any information that could reasonably be expected to impact upon this Agreement or the councils to this Agreement, save where to disclose such information would place the disclosing council in contravention of any applicable law or regulation;
 - co-operate in identifying, as early as reasonably possible, any issues or problems that will or may tend to prevent the achievement of the Joint Working Objectives and to reach and implement solutions to overcome such issues or problems and the identification and resolution of such issues or problems where possible through the Partnership Working Group or Joint Staffing Committee or, in the event that the relevant body is unable to agree, through the Executive/Cabinet or Councils as appropriate, or through the Dispute Resolution Process as set out in the Inter Authority Section 113 Agreement.
- 1.2 The councils acknowledge that any decisions made or authorisations given pursuant to this Agreement are subject to appropriate delegations and the decision making/authorisation procedures of each individual council. Any decisions are not intended to fetter the decision making requirements set out in the Constitution or legitimate democratic discretion of any of the councils.
- 1.3 Each council shall nominate members for appointment to each of the Joint Committees and the Partnership Working Group and may also nominate substitute members who may attend and vote in the absence of a nominee. A council may change their nominees from time to time by notice in writing to the Monitoring Officer for their council.
- 1.4 The Chair and Vice Chair shall be appointed by the relevant Joint Committee and the Chairing of the Joint Committees shall rotate between the councils on an annual basis. If the Chair is from one authority the Vice Chair shall be from the other. For the municipal year 2018/19 Cherwell District Council will Chair the Partnership Working Group and Oxfordshire County Council will Chair the Joint Personnel Committee and Joint Appeals Committee.
- 1.5 The formal Joint Committee shall adopt the Standing Orders and Procedure Rules of Oxfordshire County Council

- 1.6 The Partnership Working Group will be administered by Cherwell District Council Democratic Officers, the Joint Personnel Committee and Joint Appeals Panel will be supported by Oxfordshire County Council Democratic Officers.
- 1.7 The establishment of the Joint Committees does not prevent either of the council from carrying out any of the Joint Committee functions concurrently.

PARTNERSHIP WORKING GROUP

CHERWELL DISTRICT COUNCIL and OXFORDSHIRE COUNTY COUNCIL

This Partnership Working Group is joint working group of Cherwell District Council and Oxfordshire County Council. It is established as an informal working group with the express intention of exploring the creation of a shared management team and possible areas of shared services, and for preparing recommendations to both authorities for achieving effective joint arrangements.

TERMS OF REFERENCE

MEMBERSHIP

- 5 elected members from each council as appointed by the Leaders
- 5 substitute members to be appointed for each council

OBJECTIVES

Overview:

To consider joint arrangement proposals and performance and to make recommendations to the Joint Personnel Committee or separate councils for decision as required.

In detail:

To oversee the development, on a service by service basis, of a detailed business case for the creation of joint arrangements. This is likely to include recommendations as to:

- Delivering an effective and lean joint management structure
- Identifying areas to develop joint working in line with the principles agreed by both councils - including opportunities for development of aligned policy and procedures where appropriate
- Scoping the financial baselines and the capacity to improve (or maintain) the financial position of both councils
- Identifying other key benefits and associated success criteria for shared arrangements
- Establishing shared support services, serving the needs of both councils to the standards agreed by each
- Maximising the opportunities for joint initiatives and joint working with partners in ways that better meet the needs of residents
- Determining and recommending a mechanism/formula for the allocation of associated costs and efficiencies across both organisations, including a ratio for the apportionment of costs, one-off costs including redundancy and associated pension costs, arising from the creation of the Shared Senior Management Team and Shared Services
- Detailing the risks to both Councils and recommending mitigating actions to both authorities
- Establishing protocols to deal with Communications and those specified in the Inter Authority Section 113 Agreement

The Partnership Working Group will produce recommendations to the Joint Personnel Committee, Executive, Cabinet and Full Councils of both authorities, as appropriate.

REMEDIES UNDER THE SECTION 113 AGREEMENT

The Working Group shall have the role, as agreed under the Section 113 Agreement (Clauses 7.3, 7.5 and 10.1) in terms of seeking to achieve a remedy where, under one council wishes to withdraw from the Agreement and the informal Dispute under Clause 10 of the Agreement has not been successful.

QUORUM

The Working Group's meetings will be considered quorate if three elected members from each council are present.

NUMBER AND FREQUENCY OF MEETINGS

The Working Group will meet on at least four occasions a year.

The Working Group will convene at a time convenient to a majority of its Members.

The meetings will alternate between Banbury and Oxford. Officers will facilitate a standard agenda for the meetings and maintain a record of decisions and actions, together with a risks and issues log.

TIMETABLE

At its first meeting, the Working Group will agree a workplan (officers to provide a draft workplan in advance) and timescale. Notwithstanding this, it is expected that:

- Draft recommendations will be sent to the controlling and opposition groups of both authorities
- Final recommendations will be sent to the Joint Personnel Committee or each authority's Executive and Council as required

In any event, the Group will report to both Councils on its findings and recommendations in relation to the establishment of a Shared Management Team no later than six months after the signing date of the relevant Section 113 agreement.

STATUS OF THE WORKING GROUP

The Working Group is an informal working group of both authorities. As such, its meetings will not be subject to the constitutional provisions relating to access to proportionality or the information procedure rules of either authority. Its final recommendations, and the rationale for them, will of course be made public.

JOINT PERSONNEL COMMITTEE

CHERWELL DISTRICT COUNCIL and OXFORDSHIRE COUNTY COUNCIL

Under Local Government Act 1972 s.101 (5) two or more local authorities may appoint a joint committee to discharge any of their functions that are not reserved for the sole decision of a single authority in legislation. The Joint Committee can authorise an officer employed by either authority to act on its behalf. Whilst it is envisaged that the majority of daily business and processes such as recruitment, personnel and appeals will be carried out under each employing authority's decision making processes, there are a few functions which are best delivered through joint arrangements.

Area: the Joint Committee shall exercise its authority for the areas comprising of Cherwell District Council and Oxfordshire County Council.

Membership: the Committee shall be comprised of 10 Councillors, 5 from Cherwell District Council and 5 from Oxfordshire County Council with 5 named substitutes from each authority. All Councillors including substitutes will receive appropriate training before they can participate as a Committee member.

Quorum: will be 3 Members from each authority.

Chairman: the Chairman and Vice Chairman will be elected by the committee and will be representative of each authority.

Decision making: decision will be by a majority of Members of the committee present and voting.

Terms of Reference

- To have responsibility for and to take any decision on staffing matters, (other than those delegated to officers) and any other non-executive decisions function specifically delegated to the committee by the respective councils, for any shared service established for the councils
- To have responsibility for and to take any executive decisions (other than those delegated to officers), specifically delegated to it by the respective Executive arrangements of the councils with regard to any shared service established for the councils
- To ensure that any shared service meets the requirements of the councils in furthering the objectives of their respective corporate plans.
- To set and monitor performance standards and budgets for shared services, providing intervention where required.
- To take all executive decisions with regard to any established and future shared service.

Shared Management

In the case of shared Chief Officer posts:

- To act as the interviewing panel for the Head of Paid Service (Chief Executive), making recommendations to the councils for formal appointment.
- To act as the interviewing panel and appoint shared chief officers (Officers who report to the Chief Executive) working across the councils (NB. Anyone involved in the decision for a particular post must be present throughout the entire interview process).

Shared Posts

Where a business case has been agreed by the councils and a decision made to share a service between them to:

- Agree posts to be declared 'at risk', and to approve dismissal, including compulsory or voluntary redundancy and the exercise of discretionary awards to any post where costs are shared or are going to be shared. This excludes the dismissal of the Head of Paid Service, the Chief Finance Officer or the Monitoring Officer (if shared) on the grounds of misconduct which must be the subject of a resolution of the relevant full Council following compliance with the procedure set out in the Officer Employment Procedure Rules.
- Determine the terms and conditions of employment of any posts where costs are shared or are going to be shared.
- Determine and review all policies affecting the employment of staff in posts where costs are shared or going to be shared.
- Approve the creation of new posts where this is an increase to the establishment and there is no budget where costs are shared or are going to be shared.
- Approve any restructuring of teams involving more than twenty posts where costs are shared or are going to be shared.

Shared Statutory Officer Discipline

The role and responsibilities of the Joint Personnel Committee with regard to shared Statutory Officer disciplinary action is to:

- Deal with minor instances of unsatisfactory conduct at an early stage.
- Ensure that the Statutory Officer clearly understands the standards of conduct expected of him/her.
- Carry out, or make arrangements for, an investigation when any breach of discipline is alleged.
- Ensure that the Statutory Officer subject to investigation is kept up-to-date with progress.
- Decide, in the most serious cases whether or not to suspend or (where the Statutory Officer has already been suspended by the Head of Paid Service or Monitoring Officer under their delegated powers) to continue the suspension of the Statutory Officer, in accordance with the Statutory Officer disciplinary policy.

- Report to Full Council (of the employing authority) in respect of a recommendation to dismiss, having convened a Panel comprising Independent Persons in accordance with the Officer Employment Procedure Rules.

JOINT APPEALS PANEL

CHERWELL DISTRICT COUNCIL and OXFORDSHIRE COUNTY COUNCIL

Area: The Joint Committee shall exercise its authority for the areas comprising of Cherwell District Council and Oxfordshire County Council.

Membership: The Committee shall be comprised of 6 councillors, 3 from Cherwell District Council and 3 from Oxfordshire County Council with 3 named substitutes from each authority. They may not be members of the Joint Personnel Committee. All councillors including substitutes will receive appropriate training before they can participate as a Committee member.

Quorum: will be 2 Members from each authority.

Chairman: The Chairman and Vice Chairman will be elected by the Committee and will be representative of each authority.

Decision making: decision will be by a majority of Members of the Committee present and voting.

Terms of Reference

- To hear and determine any appeals by or grievance appeals against the Head of Paid Service (Chief Executive) made by any member of the Senior Management Team of either council.
- To hear and determine any appeals brought by Chief Executive and if shared Monitoring Officer and Section 151 Officer against any disciplinary sanctions imposed short of dismissal.
- To hear and determine any appeals against any disciplinary sanctions imposed on a Chief Officer who is shared between Cherwell District Council and Oxfordshire County Council excluding the statutory officers referred to above.

The Respective Roles of Members and Officers and Dealing with Conflicts of Interest

Introduction

Cherwell District Council (CDC) and Oxfordshire County Council (OCC) have created a Joint Chief Executive role and intend to create further shared posts and teams in the future. Council owned/influenced companies/organisations (Council Entities) have also been created and it is intended to create more in the future.

Shared officers will divide their time on an equal basis between the authorities or on such other basis as is agreed via the approved business case for the relevant service (although peaks of work in one or more councils may result in short term variations from this) and will at all times act in the best interests of both the authorities. Nominated officers may also spend their time serving Council Entities as set out in their letter of nomination from the councils. Underpinning this is an acknowledgment that where a smaller number of senior officers will be serving multiple organisations, there will be a need to reflect this new set of circumstances in the way in which officers have to operate.

Members of the authorities need to be sensitive to this change with regard to the respective roles of officers and members. In particular all members and officers need to be aware of the action to be taken when there is an actual or potential conflict of interest in acting for more than one organisation.

The role of Members

At each authority full Council is collectively responsible for setting Council policy within the defined policy framework. The intention of the authorities is to remain sovereign bodies under the Section 113 agreement, but in setting their own Council policy they will have regard to the views and policies of the other authority and will endeavour to avoid adopting any policy which explicitly and overtly contradicts the policy of the other authority.

CDC has established an Executive to bring forward the delivery of their agreed policies. Members of the Executive are both collectively and individually accountable for carrying through the Council's policy objectives. OCC has also established a Cabinet to bring forward the delivery of its agreed policies and members of the Cabinet are also collectively accountable for carrying through the Council's policy objectives.

At neither of the authorities are members directly involved in the day to day provision of services to the public but members of the Executive/Cabinet will have a close involvement with officers in dealing with the effectiveness of service provision. It is recognised that on occasion this may result in the need for immediate contact with officers but where practicable such contact will be on a managed basis. In order to make best use of officer and member time, there will be mutually managed contact between Executive/Cabinet members and officers on service provision where members pursue matters on behalf of their constituents.

As only Executive/Cabinet lead members/portfolio holders have executive authority/responsibilities as members all other members will need to pursue matters with the appropriate lead member/portfolio holder or officer through a managed approach. A lead member/portfolio holder at CDC and OCC may take certain decisions on matters within their own portfolio, and within the scheme of delegation of the relevant constitution, but in doing so must be aware of any possible conflict in policy or budget.

No member (lead member/portfolio holder or otherwise) should become involved in the day to day management or operation of a service area, which shall be the responsibility of the head of service.

Members may also be appointed as Non-Executive Directors/ Trustees of Council Entities.

Twin Hatted Members

It is recognised that councillors may serve as members on both the district and county council and that whilst for the majority of time there will be no conflicts of interest and therefore no declarations necessary at times potential conflicts of interest could arise. In these situations, members serving on joint committees or working groups shall be considered as representatives of the Council that has appointed them to that committee or working group. For other situations including their authorities' own meetings the Monitoring Officers will provide advice to members on a case by case basis.

The role of Officers

Officers are equally accountable to the Council and the Executive/Cabinet. All shared officers are equally accountable to both Councils and to the Executive and Cabinet as appropriate.

Officers are professional advisers on policy and carry out the instructions of the Council and the Executive/Cabinet as well as exercising powers that are delegated to them and taking operational decisions within their areas of responsibility.

Officers may also be appointed as Directors/ Trustees of Council Entities.

The possibility of conflict between organisations should be minimised by identifying from the outset where potential conflict might arise, operating the ethical walls policy appended and referring, if necessary, such conflict through the dispute resolution mechanism in the Section 113 agreement/ shareholder agreement/ Memorandum of Understanding.

The role of Directors/Trustees

Both members and officers may be Officers and may also be nominated and appointed as Directors/ Trustees of Council Entities. This will involve members and officers serving together as board members equally in terms of voting rights and responsibilities. Councillors who are Non-Executive Directors

will by their nature have different and often higher levels of involvement with the organisation to which they are appointed than members would normally have. However, day to day management of operations and staff shall remain the responsibility of the managing director of the Council Entity and board collectively.

How these roles work in practice

Decisions on matters relating to each Council's policy framework are taken by members at meetings of full Council, usually after having considered the recommendations of the Executive/Cabinet or appropriate Committee which in turn considers the recommendations of the officers.

Decisions on policy matters within the relevant Council's policy framework are taken by the Executive/ at CDC and Cabinet at OCC having considered the recommendations of officers.

Decisions on policy matters by Council Entities are taken by the board.

The Councils have an adopted scheme of delegation. This scheme sets out what is delegated to which body or officer, either conditionally or unconditionally. The Councils can review their scheme of delegation at any time to ensure decisions are being taken at the appropriate level. The process of delegation ensures that members are not overloaded with relatively less important matters and can concentrate on important policy issues and the effectiveness of service provision and continuous improvement in service. Members who are not portfolio holders have an important role in representing the views of their constituents and ensuring through scrutiny that the Council's policies and plans are effectively delivered. Some members (portfolio holders and otherwise) have roles on regulatory committees dealing with matters such as planning and licensing. To minimise the possibility of any conflict of interest, or defect in process, the schemes of delegations of the authorities should be harmonised so far as possible. Where differences need to remain there should be a clear business case for this.

Council Entities have adopted articles or a constitution and these documents set out what is delegated to which body or employee, either conditionally or unconditionally. They can be reviewed at any time to ensure decisions are being taken at the appropriate level.

It is recognised that there may be rare occasions where it is not possible to reconcile the interests of two or more organisations with their respective legal responsibilities. Such conflicts shall be managed by ensuring that relevant officers and members in each organisation are ring fenced from each other through the creation of ethical walls in accordance with the appended procedure to ensure that due regard is taken of each organisation and the need for certain matters to remain confidential to one or other organisation.

Statutory requirements

The Councils derive their powers from statute. Some of these are mandatory (i.e the Councils must do them) and some are discretionary (i.e the Councils may carry them out if they wish). In all cases members and officers of both authorities may only operate within the law.

Councils must have a Head of Paid Service, a Monitoring Officer and a Section 151 Officer. These officers are part of the senior management team and have an obligation to act in the best interests of their appointing authority/authorities.

If any of these statutory posts in a shared role consider that there is a conflict of interest within their area of responsibility which is affecting the ability of either Council to function effectively the most appropriate statutory officer may take a report to the appropriate full Councils setting out the conflict of interest and proposals for resolution.

Summary

Members are responsible for setting Council policy.

Officers are responsible for advising members on the setting of Council policy and for ensuring such policy is implemented.

The scheme of delegation determines which body or person deals with particular matters, and at which level decisions are taken.

The day to day management and operation of services is the responsibility of officers.

Where officers are dividing their time between two or more organisations members need to have regard to less time being available for their authority alone and the need to manage contact with officers to ensure the optimum use of both member and officer time.

If conflicts arise in relation to the respective regulatory duties of any of the organisations steps will be taken to ensure the ring fencing of officers and the confidentiality of information as necessary.

Otherwise, where there is actual or potential conflict there are three routes depending on the nature of the conflict,

1. agree to pay for appropriate external support to advise one or more authorities.
2. refer the issue through the dispute mechanism in the section 113 agreement, shareholder agreement or memorandum of understanding.
3. the most appropriate statutory officer may refer the matter to either or both full Councils for resolution.

Appendix

Ethical Walls Procedure

This procedure is designed to be read alongside the protocol on the Respective Roles of Members and Officers and Dealing with Conflicts of Interest.

It is recognised that there may be rare occasions most commonly in a regulatory context or where a council owned/ influenced company/organisation context (Council Entity) has been established where it is not possible to reconcile the interests of the two Councils or those between the council(s) and a Council Entity with their respective legal responsibilities.

Such conflicts shall be managed by ensuring that relevant officers working for each side are ring fenced from each other to ensure that due regard is taken of the respective and conflicting duties and interests and the need for certain matters to remain confidential to the individual Council or Council Entity. This procedure sets out how this will operate in practice.

Background

An Ethical wall, cone of silence, screen or firewall is a business term describing an information barrier within an organisation that is erected in order to prevent exchanges or communication that could lead to conflicts of interest and/or the disclosure of information which is confidential to one Council or the other or to a Council Entity. For example an ethical wall may be erected to separate and isolate people who make investments from those who are privy to confidential information that could influence the investment decisions, in newspapers between journalists and advertising executives to protect editorial independence and in law firms where different solicitors are acting for different clients on the same issue.

For the vast majority of members and officers there will be no conflict of interest in working for, being appointed to or advising more than one Council or Council Entity, in fact most officers and members will not experience this during their time in local government. However, a small number of officers and members mainly those holding Executive, senior management, statutory, legal, financial, regulatory and planning posts may face situations where they become aware of conflict or potential conflict between the councils or between one or both of the Councils and a Council Entity. There is a need for officers and members in these posts to maintain vigilance in identifying these situations where conflict could arise. Whilst there is no definitive list of these situations, these might include where one authority is consulting the other with regard to planning policy, planning applications, boundary changes, electoral areas or other situations where there is either an implied or express duty to consult and/or co-operate.

Similar situations apply with regard to legal matters where the Councils are on either side of a dispute and the consideration of homelessness applications to one Council where there may be a local connection identified with one of the others. Similar situations apply to the Council(s) and Council Entities where an officer or member may be a Director or trustee or where an officer or member who is a Director may be dealing with other officers or members in their capacity as Directors or trustees of another Council Entity.

In all cases officers and members should always err on the side of caution and seek advice as it is much better to deal with and plan for potential conflicts, as when actual conflicts are identified it may be that too many officers and members are already acting for one side or the other and/or the erection of the Ethical Wall may be too late. The creation of an Ethical Wall does require a level of maturity and respect from those on either side of it. For instance it is not uncommon for a manager to be on one side and a direct report on the other.

If there is a conflict or significant risk of a conflict, between the councils, or between the Council(s) and a Council Entity the officer or member must not act for both, except where the councils or the council(s) and the Council Entity are expressly pursuing the same common objective. In all cases of conflict or potential conflict a decision should be sought immediately from the Monitoring Officers of the respective Councils. The Monitoring Officers in deciding whether there is a conflict or whether the officer or member can act for multiple organisations, will ensure that the overriding consideration is the best interests of the individual organisation, and in particular, whether the benefits of the officer or member acting for all them outweighs the risk.

If the Monitoring Officers jointly feel that there is a risk of conflict or that the interest of the organisations are not best served by an officer or member acting for both they will invoke this procedure.

Procedure

When a conflict or potential conflict is identified an officer or member should alert the Monitoring Officers or one of their deputies.

The Monitoring Officers will provide advice to the officer on whether there is a conflict and in all cases alert the Senior Management team members. The Monitoring Officers will maintain an audit trail of his actions and any advice given, including a list of active Ethical Walls.

In the case that a conflict or potential conflict is identified the Monitoring Officer (in consultation with the relevant members/ Senior Management team) will draw up a list of the officers who will be representing the interests of each party.

The Monitoring Officers will alert those on the list, Senior Management team, relevant lead members and any external parties to the discussion, that an Ethical Wall has been put in place and who they should deal with.

Once the Ethical Wall has been erected, officers on either side of the wall should treat and behave towards the other Council or Council Entity and the officers representing it with full regard to the issue in question as if they were an external organisation. That is information supplied by the other party should be thoroughly and critically examined and not taken on trust or face value, and information which is confidential to the interests of the organisation they represent must not be disclosed to the other party.

Whilst this relationship should be respectful and business like, it should be based on auditable correspondence as opposed to verbal communications as such documents could later be relied upon in legal action.

It should be agreed where files and electronic correspondence should be held and neither party should access information held by the other. Appropriate access restrictions will be established by ICT Services for information held electronically.

Officers should only advise members and officers on their side of the wall. Reports to committees must be in the name of and signed off by officers on the correct side of the wall and officers should not be present at meetings at any time when they are dealing with the issue on the other side of the wall.

The Ethical Wall should only be used for the issue in question and does not extend to any other areas of work.

When the issue in question has been successfully concluded the Monitoring Officer(s) should be notified and they will close the issue on the list of active Ethical Walls if they deem it appropriate.

In the case of an Ethical Wall between the Councils, the list will contain a minimum of two named officers on either side, one of which will be the Monitoring Officer of the respective Council, a Deputy Monitoring Officer or a legal officer. The Head of Paid Service (or in her absence or case of conflict her deputy) will not normally be assigned to either side of the wall and will not become involved in the issue. This enables the Head of Paid Service to arbitrate on any issue including human resources implications which may arise in the operation of this procedure. For employees in shared teams the identity of their employing Council will not necessarily dictate the side of the Wall to which they are allocated.

Statutory Officers and Section 113 Agreement Dispute Resolution Procedure

All Councils must have a Head of Paid Service, a Monitoring Officer and a Section 151 Officer. These officers are part of the management teams and have a legal obligation to act in the best interests of the authorities which appointed them.

It is imperative that the statutory officer system is robust and resilient therefore statutory officers should ensure that they appoint deputy statutory officers who may act for the other council(s) in case they are conflicted. To account for this and also to ensure there is sufficient statutory officer resilience; the recommendation is that each statutory officer appoints at least one, but preferably two deputies.

If any of these statutory posts consider that there is a conflict of interest within their area of responsibility, which has not been resolved through invoking this procedure and which is affecting the ability of any of the individual Councils to function effectively the most appropriate statutory officer(s) may take a report to the full Councils setting out the conflict of interest and proposals for resolution and invoke the Section 113 Agreement dispute resolution procedure between the Councils or the relevant shareholder agreement/ Memorandum of Understanding Dispute resolution procedure for Council Entities if necessary.

Chief Executive Protocol

- 1.1 The Employee will divide their time between the councils so that the business needs and objectives of the councils can be met and that there is a fair allocation of time (having regard to the cost sharing arrangements for the Employee).
- 1.2 The Employee shall work jointly for and on behalf of the councils pursuant to section 113 of the Local Government Act 1972 and shall be entitled to take binding decisions on behalf of the councils in accordance with their respective constitutions.
- 1.3 The Employment Agreement shall remain in force during the term of this Agreement and the Employee shall remain an employee of Cherwell. Nothing in this Agreement will be construed or have effect as construing any relationship of employer and employee between Oxfordshire and the Employee.
- 1.4 Oxfordshire shall not require the Employee to do anything which shall or may, breach the Employment Agreement and shall have no authority to vary the terms of the Employment Agreement or make any representations to the Employee in relation to the terms of such Employment Agreement.
- 1.5 Oxfordshire shall provide Cherwell with such information and assistance as Cherwell may reasonably require to carry out its obligations towards the Employee.
- 1.6 The Employee will usually be based at Bodicote House, Bodicote, Banbury OX15 4AA in Cherwell and County Hall, New Road, Oxford, OX1 1ND, however, the Employee will be expected to travel to/work from other offices within Oxfordshire as required and occasionally attend events and meetings elsewhere, outside of the County.
- 1.7 The following obligations will remain with Cherwell:
 - payment of the Employee's salary and any allowances, employer's pension contributions, providing any benefits due to the Employee or their dependants, any payments to third parties in relation to the Employee and making any deductions which it is required to make from the Employee's salary and any other payments which may be due to the Employee;
 - management Issues; and
 - disciplinary action including dismissal.
 - Training and development, appraisal, discipline and performance management arrangements will be the responsibility of Cherwell and will be in line with Cherwell's HR policies in force from time to time.
- 1.8 The Employee shall have an annual performance appraisal as set out below:

Chief Executive Appraisal

The appraisal should continue to be conducted in March and with a six month review in October. All dates will be arranged by an independent facilitator

- 1) Chief Executive prepares her draft submission on how she has achieved her targets and met her role profile in the competency framework and suggests targets for next year based on agreed corporate priorities agreed at February council meetings.
- 2) Meeting between Chief Executive and independent facilitator to prepare for appraisal, discuss draft and critical friend approach. Draft revised to finalised version following meeting.
- 3) Meeting with opposition group leaders (or nominated deputy in case of absence) and independent facilitator to discuss draft and any issues and themes to be discussed at the appraisal
- 4) Meeting between Leaders of the Councils (or nominated deputy in case of absence) and independent facilitator to discuss draft and any issues, issues raised by opposition group leaders and themes to be discussed at the appraisal.
- 5) Informal preparation discussion between Chief Executive and independent facilitator.
- 6) Appraisal meeting with Leaders of the Councils (or nominated deputy in case of absence), Chief Executive and independent facilitator.
- 7) Independent facilitator drafts outcomes, agreed with Leaders of the Councils and then passed to Chief Executive for her comment.
- 8) Final document agreed and filed in the employees personnel file at Cherwell District Council, a summary of outcomes and objectives will be circulated to all group leaders.
- 9) Summary of outcomes and objectives reported into next available Joint Personnel Committee as an exempt report.

1.9 The councils may act jointly in relation to any investigation, grievance, disciplinary, capability or performance issue, raising a concern at work, equality, dignity, bullying, harassment or other claim or action under any of Cherwell's policies or procedures, but any resulting process or action will be undertaken by Cherwell (and the other council acknowledges that it is not entitled to take any disciplinary action against the Employee).

1.10 Cherwell shall continue to deal with any Management Issues concerning the Employee during the period of this Agreement, where relevant following consultation with Oxfordshire.

- 1.11 Each council shall inform the other as soon as reasonably practicable of any other significant matter which arises relating to the Employee or her employment.
- 1.12 Where the Employee identifies any actual or potential conflict of interest between the councils in relation to the provision of the Employee's services under this Agreement then the Administrator shall be informed and shall seek to ensure that such conflict is addressed to the satisfaction of both councils.
- 1.13 The Employee shall continue to be eligible for sick pay, holiday pay and any absence entitlements in accordance with the Employment Agreement, and shall remain subject to Cherwell's approval and notification procedures.
- 1.14 Cherwell shall use its reasonable endeavours to procure that the Employee shall not, except in the proper course of their duties, as required by law or as authorised by Oxfordshire during the period of this Agreement or after its termination (howsoever arising) use or communicate to any person, company or other organisation whatsoever (and shall use their reasonable endeavours to prevent the use or communication of) any Confidential Information relating to Oxfordshire that may be created, developed, received or obtained during the this Agreement. This restriction does not apply to any information that is or comes into the public domain other than through the Employee's unauthorised disclosure.

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Division(s): N/A

AUDIT & GOVERNANCE COMMITTEE

12 SEPTEMBER 2018

LOCAL GOVERNMENT OMBUDSMAN – ANNUAL REVIEW REPORT

Report by the Monitoring Officer

Introduction

1. Each year, the Local Government Ombudsman (LGO) issues an Annual Review Report about each council in relation to the complaints made to the Ombudsman about that Council in the previous financial year. My report to this Committee therefore informs members about the LGO's Annual Review Report for Oxfordshire County Council for the year 2017/18.
2. In short, the same amount of complaints about the Council have been upheld by the Ombudsman in 2017/18 as compared to the previous year, but with fewer complaints being referred to him. That being said, put into the context of county council performance generally, the Council has the third lowest number of complaints decided compared with other County Councils and has the fourth lowest number of upheld complaints (seven in total) against the same comparison. It remains encouraging that fewer complaints are being made to the LGO. It continues to suggest that the Council's system of control expressed through its own complaints processes is working well.
3. This is not a case for complacency however and this report sets out the LGO's findings, the wider context and also details the complaints upheld by the LGO during 2017/18.

The LGO's 2017/18 report

4. Under the Local Government Act 1974, the LGO has two main statutory functions:
 - To investigate complaints against councils (and some other authorities)
 - To provide advice and guidance on good administrative practice
5. Following changes to the structure of the Ombudsman's investigative and recording procedures, the Ombudsman now records the following categories of information – summarised in their Annual Review Report (attached as **Annex 1**):
 - Complaints and enquiries received - by subject area

- Decisions made (upheld, not upheld, advice given, closed after initial enquiries, incomplete/invalid and premature)

Complaints and enquiries received by the LGO

6. During 2017/18, the LGO received **44** *complaints and enquiries* about the Council. In 2016/17 this had been 66; and in 2015/16 59. This significant decrease is encouraging this appears contrary to the national trend reported by the Ombudsman. As the Ombudsman has said, a rise in complaints is not in itself indicative of problems. In the Ombudsman's Foreword to this year's Review of Local Government Complaints 2017/18 the LGO Mr Mike King said:

"In providing these statistics, I would stress that the volume of complaints does not, in itself, indicate the quality of the council's performance. High volumes of complaints can be a sign of an open, learning organisation, as well as sometimes being an early warning of wider problems. Low complaint volumes can be a worrying sign that an organisation is not alive to user feedback, rather than always being an indicator that all is well".

7. The Council's complaints policy and processes are indeed well publicised and responses indicate how complaints can be escalated further including to the Ombudsman. A general increase in the number of complaints being upheld against councils is reported in the LGO's Review of Local Government Complaints 2017/08, which states that nationally overall 57% of all substantive investigations have been upheld compared with 54% from 2016/17.
8. Oxfordshire bucks this trend in that there has been no increase (and no decrease) in the number of upheld complaints: 7 in 2017/18, the same number as in 2016/17. However, compared with other County Councils, Oxfordshire has the fourth lowest number of upheld complaints, as opposed to third position last year, which is not a major shift and remains a positive sign that the Council's own complaints policy is sufficiently robust.
9. **Annex 1** to this report includes the LGO's full list of subject areas for Oxfordshire County Council which has attracted referrals to the Ombudsman. These were:
 - Adult care services- 14
 - Education and children's services- 23
 - Highways and transport- 5
 - Corporate and other services- 1
 - Environment services- 1
 - Planning and development- 0
10. This is consistent with the national picture and is not particular to Oxfordshire. The LGO has reported that in 2017/18 the LGO received over 17,452 complaints and enquiries about councils. The greatest proportion was about Education and Children's Services, followed by Adult Social Care, and Planning.

Decisions made by LGO

11. During the reporting period, the LGO made **40 decisions** concerning the Council (26 fewer than the previous year). Of these, some complaints were closed and not pursued (12 out of 40, 30%). Some complaints were referred back to the Council for resolution (14 out of 40 cases, 35%) as the complainant had not allowed the Council to consider the complaint first.
12. **Investigations** were therefore carried out into 14 complaints, 5 fewer than in 2016/17. The LGO's report indicates that of these, 5 were not upheld, 2 were considered incomplete or invalid, while 7 were upheld. The LGO therefore reports an 'Uphold rate' figure for the Council of 58%% (7 upheld cases out of 14 full investigations). This is 21% more than the previous year.

Context

13. The Council received 244 Corporate Complaints during the 2017/18 financial year (these being complaints about non-social care issues). In addition, the Council received 169 Adult Social Care complaints and 107 Children's Social Care complaints giving a collective total of 520 complaints. The total of complaints upheld by the Ombudsman represents just 1.4% of the whole complaints received by the Council.
14. Thumbnail details of the 7 upheld complaints are as follows:

Nature of decision	Remedy
<p><u>Summary:</u></p> <p>The Complainant complained that the Trust, Council and CCG failed to agree to refund the care home fees paid for her late relative, under either s.117 of the Mental Health Act 1983 or NHS Continuing Healthcare Funding.</p>	<p>The Council agreed to remedy this matter by calculating its proposed refund of the care home charges plus interest</p>
<p><u>Summary:</u></p> <p>The complainants complained about the actions of the Council's Children's Services Department in respect of the way the Council dealt with a child protection investigation, alleging it failed to make suitable educational provision for their child.</p> <p>Fault was found in the way the Council handled a child protection</p>	<p>Reconsider the complaint through the procedure for complaints about child protection conferences.</p> <p>Add a copy of the decision on the case notes of the child concerned.</p> <p>Pay £250 for the time spent in pursuing the complaint and another £250 for distress caused.</p>

Nature of decision	Remedy
investigation and the complaint about it that followed.	An apology
<p><u>Summary:</u></p> <p>The complainant complained that the Council failed to take action on poor provision of care by a care provider, refused to adequately cover the costs of care needs and in calculating contribution to care costs, failed to consider the extra costs of a live-in carer.</p> <p>Fault was found for the Council's approach to a calculation of a suitable budget for the care needs.</p>	<p>An apology.</p> <p>Review procedures.</p> <p>Recalculation of the budget and backdating.</p> <p>Payment of £1,275 towards the complainant's legal expenses and payment of £500 to reflect the time and trouble for the complainant.</p>
<p><u>Summary:</u></p> <p>The complainant complained that the Council had failed to properly consider her complaint about the Council taking her child into care and follow recommendations from the stage three complaints panel.</p> <p>No evidence that the Council failed to properly consider the complaint but the investigator did find that the Council failed to follow one of the stage three panel's recommendations.</p>	An apology
<p><u>Summary:</u></p> <p>The complainant complained that the Council failed to arrange suitable education for him since September 2016 under his Education, Health and Social Care Plan (EHCP). The Council was found at fault.</p>	<p>Payment of £6000 and a further £250 for the distress caused.</p> <p>Requirement to obtain an up to date medical opinion as to whether the complainant could manage school.</p> <p>An apology</p>
<p><u>Summary:</u></p> <p>The complainant complained the</p>	An apology.

Nature of decision	Remedy
<p>Council acted wrongly in carrying out a section 47 investigation in respect of his child.</p> <p>No fault in the Council conducting a section 47 investigation but fault found as the Council did not properly communicate with the complainant.</p>	<p>Review to establish what happened in this case.</p>
<p><u>Summary:</u></p> <p>The Complainant complained that the Council failed with regards to notice of amendments and the issuing of a final ECHP.</p> <p>The investigator found fault with this.</p>	<p>An apology</p> <p>Payment of £150 for time and trouble.</p> <p>Review of procedure with regards to ECHP.</p>

15. In the Annual Letter, in respect of the first complaint in the above table, the Council was commended by the LGO for its willingness to recognise fault and to take action to put matters right by reconsidering its view and proactively offering an appropriate remedy. The LGO said he “welcome[d] this positive approach to complaint handling”.

Comparison with other county councils

16. An analysis of the Council’s performance in comparison to the UK’s other County Councils is included as **Annex 2**. This contextualises the data which makes up the Ombudsman’s report and provides useful comparators for measuring the Council’s overall performance.

17. A comparison of overall LGO ‘decision statistics’ for other county councils shows that Oxfordshire County Council:

- Ranked fourth lowest in the number of complaints upheld by the LGO
- Ranked the third lowest number of complaints investigated by the LGO

Exempt Information

18. None.

Conclusion

19. This year's Annual Letter from the Ombudsman is generally positive. While not a cause for complacency, (each upheld complaint has been taken seriously and is one too many), the LGO's report indicate that this important strand of governance is working effectively. It suggests that the Council's complaints handling is robust and enables the large majority of complaints to be resolved within existing procedures (with each response containing a clear referral-route to the LGO).
20. On my behalf, during this period the Access & Disclosure Team in Law and Governance continued to disseminate best practice, case studies and advice to managers on the handling of complaints, to keep knowledge current. The Team also monitored responses to ensure that complaints, particularly at the further review stage internally, were soundly considered and also contained the necessary signposting to the LGO. Having regard to how the LGO is likely to view a complaint is also helpful in enabling managers to consider how best to respond to complaints. This helps to ensure robust and informative responses, based on good governance principles. This Team also co-ordinated the responses to LGO complaints, liaising with service managers to ensure that the LGO receives a full and frank response, in the interests of accountability and good governance. During the year ahead, the team will also be meeting with Directorate Leadership Teams to commend and reinforce best practice and to ensure good complaints handling.

Financial and Staff Implications

21. None.

RECOMMENDATION

22. **The Committee is RECOMMENDED to note and comment upon this report and on the Local Government Ombudsman's Annual Review of Oxfordshire County Council for 2017/18.**

Nick Graham
Monitoring Officer

Background papers: Local Government Ombudsman publications:

- Review of Local Government Complaints 2017/18

Contact Officer: Nick Graham
01865 323910

September 2018

18 July 2018

By email

Peter Clark
Head of Paid Service
Oxfordshire County Council

Dear Peter Clark,

Annual Review letter 2018

I write to you with our annual summary of statistics on the complaints made to the Local Government and Social Care Ombudsman (LGSCO) about your authority for the year ended 31 March 2018. The enclosed tables present the number of complaints and enquiries received about your authority and the decisions we made during the period. I hope this information will prove helpful in assessing your authority's performance in handling complaints.

Complaint statistics

In providing these statistics, I would stress that the volume of complaints does not, in itself, indicate the quality of the council's performance. High volumes of complaints can be a sign of an open, learning organisation, as well as sometimes being an early warning of wider problems. Low complaint volumes can be a worrying sign that an organisation is not alive to user feedback, rather than always being an indicator that all is well. So, I would encourage you to use these figures as the start of a conversation, rather than an absolute measure of corporate health. One of the most significant statistics attached is the number of upheld complaints. This shows how frequently we find fault with the council when we investigate. Equally importantly, we also give a figure for the number of cases where we decided your authority had offered a satisfactory remedy during the local complaints process. Both figures provide important insights.

I want to emphasise the statistics in this letter reflect the data we hold, and may not necessarily align with the data your authority holds. For example, our numbers include enquiries from people we signpost back to the authority, some of whom may never contact you.

In line with usual practice, we are publishing our annual data for all authorities on our website, alongside an annual review of local government complaints. The aim of this is to be transparent and provide information that aids the scrutiny of local services.

I was pleased to note in one case involving both the Council and a health authority, the Council's willingness to recognise fault and to take action to put this right. In response to our

enquiries it reconsidered its view and proactively offered an appropriate remedy. I welcome this positive approach to complaint handling.

Future development of annual review letters

Last year, we highlighted our plans to move away from a simplistic focus on complaint volumes and instead turn focus onto the lessons that can be learned and the wider improvements we can achieve through our recommendations to improve services for the many. We have produced a new [corporate strategy](#) for 2018-21 which commits us to more comprehensively publish information about the outcomes of our investigations and the occasions our recommendations result in improvements to local services.

We will be providing this broader range of data for the first time in next year's letters, as well as creating an interactive map of local authority performance on our website. We believe this will lead to improved transparency of our work, as well as providing increased recognition to the improvements councils have agreed to make following our interventions. We will be seeking views from councils on the future format of our annual letters early next year.

Supporting local scrutiny

One of the purposes of our annual letters to councils is to help ensure learning from complaints informs scrutiny at the local level. Sharing the learning from our investigations and supporting the democratic scrutiny of public services continues to be one of our key priorities. We have created a dedicated section of our website which contains a host of information to help scrutiny committees and councillors to hold their authority to account – complaints data, decision statements, public interest reports, focus reports and scrutiny questions. This can be found at www.lgo.org.uk/scrutiny. I would be grateful if you could encourage your elected members and scrutiny committees to make use of these resources.

Learning from complaints to improve services

We share the issues we see in our investigations to help councils learn from the issues others have experienced and avoid making the same mistakes. We do this through the [reports](#) and other resources we publish. Over the last year, we have seen examples of councils adopting a positive attitude towards complaints and working constructively with us to remedy injustices and take on board the learning from our cases. In one great example, a county council has seized the opportunity to entirely redesign how its occupational therapists work with all of its districts, to improve partnership working and increase transparency for the public. This originated from a single complaint. This is the sort of culture we all benefit from – one that takes the learning from complaints and uses it to improve services.

Complaint handling training

We have a well-established and successful training programme supporting local authorities and independent care providers to help improve local complaint handling. In 2017-18 we delivered 58 courses, training more than 800 people. We also set up a network of council link officers to promote and share best practice in complaint handling, and hosted a series of seminars for that group. To find out more visit www.lgo.org.uk/training.

Yours sincerely,



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

Local Authority Report: Oxfordshire County Council
For the Period Ending: 31/03/2018

For further information on how to interpret our statistics, please visit our website:
<http://www.lgo.org.uk/information-centre/reports/annual-review-reports/interpreting-local-authority-statistics>

Complaints and enquiries received

Adult Care Services	Benefits and Tax	Corporate and Other Services	Education and Children's Services	Environment Services	Highways and Transport	Housing	Planning and Development	Other	Total
14	0	1	23	1	5	0	0	0	44

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Decisions made

				Detailed Investigations			
Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Not Upheld	Upheld	Uphold Rate	Total
2	0	14	12	5	7	58%	40

Notes

Our uphold rate is calculated in relation to the total number of detailed investigations.
 The number of remedied complaints may not equal the number of upheld complaints. This is because, while we may uphold a complaint because we find fault, we may not always find grounds to say that fault caused injustice that ought to be remedied.

Complaints Remedied

by LGO	Satisfactorily by Authority before LGO Involvement
7	0

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Complaints and Enquiries Decided (by Outcome) 2017-18

Authority Name	Invalid or Incomplete	Advice Given	Referred Back for Local Resolution	Closed after Initial Enquiries	Not Upheld	Upheld	Uphold Rate (%)	Total	Complaints Remedied by LGO	Complaints Remedied by Authority
Staffordshire County Council	7	2	39	28	10	40	80	126	33	5
Lancashire County Council	11	1	64	62	14	39	74	191	33	3
Essex County Council	9	0	61	55	25	35	58	185	31	0
Norfolk County Council	5	1	43	26	11	33	75	119	27	3
Nottinghamshire County Council	3	0	26	32	20	25	56	106	18	4
Northamptonshire County Council	5	1	40	17	7	21	75	91	18	3
Hertfordshire County Council	4	0	44	25	12	20	63	105	18	1
Kent County Council	11	0	59	55	30	19	39	174	19	0
North Yorkshire County Council	3	0	15	28	8	19	70	73	16	2
Surrey County Council	9	5	49	42	16	18	53	139	14	0
Devon County Council	2	0	33	31	15	17	53	98	13	1
Durham County Council	9	2	50	40	16	16	50	133	13	3
East Sussex County Council	8	0	25	20	19	16	46	88	11	1
Suffolk County Council	5	1	43	22	3	13	81	87	10	3
West Sussex County Council	4	0	23	34	15	12	44	88	9	1
Somerset County Council	4	1	42	11	7	12	63	77	10	0
Hampshire County Council	11	0	53	33	10	11	52	118	10	0
Lincolnshire County Council	1	0	37	17	7	11	61	73	11	0
Warwickshire County Council	2	0	31	12	15	11	42	71	10	0
Cumbria County Council	1	0	25	13	9	11	55	59	10	1
Worcestershire County Council	1	1	20	12	3	11	79	48	8	1
Buckinghamshire County Council	6	0	21	20	9	9	50	65	7	0
Derbyshire County Council	3	0	44	31	8	8	50	94	7	0
Gloucestershire County Council	6	0	23	19	8	8	50	64	6	2

Authority Name	Invalid or Incomplete	Advice Given	Referred Back for Local Resolution	Closed after Initial Enquiries	Not Upheld	Upheld	Uphold Rate (%)	Total	Complaints Remedied by LGO	Complaints Remedied by Authority
Dorset County Council	5	0	21	14	9	8	47	57	8	0
Oxfordshire County Council	2	0	14	12	5	7	58	40	7	0
Leicestershire County Council	1	1	24	25	5	5	50	61	3	1
Cambridgeshire County Council	0	1	15	15	3	5	63	39	5	0
Rutland County Council	0	1	3	5	1	1	50	11	1	0

Notes

These statistics include all complaints and enquiries that were decided from 01 April 2017 to 31 March 2018.

Some cases are received and decided in different business years. This means the number of complaints and enquiries received may not match the number of decisions made.

For more information on how to interpret our statistics <http://www.lgo.org.uk/information-centre/reports/annual-review-reports/interpreting-local-authority-statistics>

AUDIT & GOVERNANCE COMMITTEE – 12 SEPTEMBER 2018

Report On The Authority's Policy For Compliance With The Regulation Of Investigatory Powers Act 2000 And Use Of Activities Within The Scope Of This Act

Report by the Monitoring Officer

Introduction

1. The Regulation of Investigatory Powers Act 2000 ('the Act') regulates the use of covert activities by Local Authorities. It creates the statutory framework by which covert surveillance activities may be lawfully undertaken. Special authorisation arrangements need to be put in place whenever a Local Authority considers commencing covert surveillance or considers obtaining information by the use of informants or officers acting in an undercover capacity.
2. Codes of Practice under the Act require that elected members review the Authority's use of the Act periodically and review the Authority's policy annually. This paper provides a summary of the activities undertaken by Oxfordshire County Council that fall within the scope of this Act for the period from April 2017 to March 2018. The Authority's Policy for Compliance with the Regulation of Investigatory Powers Act 2000 is attached in annex 1 for consideration.
3. As part of the legislative regime, the Office of Surveillance Commissioners carry out inspections from time to time to examine an authority's policies, procedures, operations and administration. In May 2017, Assistant Commissioner (His Honour Brian Barker CBE, QC) visited the County Council to inspect the processes of the Council and the Oxfordshire Fire and Rescue Service. This report summarises the actions taken in the last year to address the findings of the Commissioner's investigation.
4. The Office of Surveillance Commissioners has now been incorporated into the Investigatory Powers Commissioner's Office. Therefore, future RIPA inspections of this authority will be carried out by this office.

Use of the Act by Oxfordshire County Council

5. Between April 2017 and March 2018 the Council authorised covert surveillance on only 3 occasions. This was the same number of authorisations as in the previous year.
6. All the authorisations for surveillance granted in 2017/2018 related to work to tackle the sale of illegal tobacco. Illegal tobacco refers to cigarettes, hand-rolling tobacco or other smoking products that have been smuggled into the UK without tax being paid on them, or which are counterfeit. They can be attractive to children and young people as they are often sold at "pocket

money prices” by unscrupulous sellers. The importation, distribution and supply of illegal tobacco is often linked with other forms of criminality.

7. The County Council’s Trading Standards team is working with retailers and partner organisations to raise awareness of the problem of illegal tobacco, and carries out enforcement action when required. This has included the use of sniffer dogs trained to detect tobacco and has led to the seizure of over 30,000 illegal cigarettes in the last few months.
8. As part of the enforcement activity required to reduce the availability of illegal tobacco in Oxfordshire, test purchases are carried out in shops which are suspected of stocking these products. These test purchases constitute surveillance. Between April 2017 and March 2018 a total of 3 authorisations were sought and granted under RIPA relating to illegal tobacco enforcement; 2 for directed surveillance and 1 CHIS. As a result, 13 test purchases were attempted and of these 9 resulted in a sale of illegal tobacco.
9. In the same period there were no requests for access to communications data that were authorised (i.e. requests to provide the names and addresses of subscribers of telephone numbers). This also falls within the scope of RIPA and is addressed in the Council’s RIPA Policy.
10. In May 2018 a potential breach of the requirements of RIPA was reported to the Investigatory Powers Commissioners Office. This breach related to a Council officer who undertook surveillance on an individual without appropriate authorisation under RIPA. The officer undertook surveillance as a result of suspecting the individual had overstated their care needs when completing a care assessment. As a result of this potential RIPA breach a practice note was issued to social care staff reminding them of the requirements of RIPA.

Actions Taken on the Recommendations of the last Office of the Surveillance Commissioners review

11. The main recommendation arising from the Commissioner’s inspection in 2017 was to organise refresher training on the requirements of RIPA for the Council’s authorising officers. This training was carried out in March 2018 and was provided by an external company that specialises in training on this subject. All Council managers who are able to authorise activities within the scope of RIPA attended this training.
12. The other recommendations were all addressed prior to last year’s report to the committee and were outlined in that report.

RIPA Policy

13. The Council’s RIPA Policy is included in Annex 1 of this report. This policy has been updated since the last report to the committee to name a wider group of officers as persons who may authorise activities under RIPA. The additional named authorising officers are substitutes who may only act in the absence of the other authorising officers.

14. The Committee is asked to note the revised Policy and comment to the Monitoring Officer on any matters that they would like the Monitoring Officer to consider.

Magistrate's Oversight

15. From October 2012 the Protection of Freedoms Act 2012 required Judicial oversight of authorisations of covert surveillance activities. All authorisations for covert surveillance activities falling within the scope of the Act granted by local authorities now need Magistrate's approval before they take effect. Since these changes came into force Magistrate's approval has been granted on all occasions that an application has been made.

Conclusion

16. Use of activities that fail within the scope of RIPA remains infrequent by this Council. Since the last annual report the group of officers who may authorise surveillance has been widened to provide resilience and refresher training on the requirements of RIPA has been provided to all authorising officers. This addresses the outstanding recommendation of the last Office of the Surveillance Commissioner inspection.

RECOMMENDATIONS

17. The Committee is **RECOMMENDED** to:

- (a) **Consider and note the use of activities within the scope of the Regulation of Investigatory Powers Act by the Council and actions taken to address the outcome of the Office of Surveillance Commissioners report, and**
- (b) **Note the revised Policy document at Annex 1 and to comment on any changes to the Policy for Compliance with the Regulation of Investigatory Powers Act 2000 that the committee would wish the Monitoring Officer to consider.**

NICK GRAHAM

Monitoring Officer and Chief Legal Officer

Contact officer: Richard Webb. Tel: 01865 815791

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POLICY ON COMPLIANCE WITH THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

1. Introduction

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) regulates the use of covert surveillance activities by Local Authorities. Special authorisation arrangements need to be put in place whenever the Local Authority considers commencing a covert surveillance or obtaining information by the use of informants or officers acting in an undercover capacity.
- 1.2 The authorisation requirements under RIPA also apply to the use of social media sites for investigations or gathering evidence to assist in enforcement activities, as set out below:
- officers must not create a false identity in order to 'befriend' individuals on social networks without authorisation under RIPA.
 - officers viewing an individual's public profile on a social network should do so only to the minimum degree necessary and proportionate in order to obtain evidence to support or refute the suspicions or allegations under investigation.
 - repeated viewing of open profiles on social networks to gather evidence or to monitor an individual's status, must only take place once RIPA authorisation has been granted and approved by a Magistrate.
 - officers should be aware that it may not be possible to verify the accuracy of information on social networks and, if such information is to be used as evidence, take reasonable steps to ensure its validity.
- 1.3 Local Authorities do operate covert activities in a number of key areas. Activities can include covert surveillance in relation to Internal Audit and Human Resources where fraud, deception or gross misconduct by staff might be suspected. The legal requirements are now supplemented by Codes of Practice issued by the Home Office for certain surveillance activities, (covert surveillance activity and covert human intelligence sources) breaches of which can be cited in Court as evidence of failure to abide by the requirements of RIPA. This may mean that the evidence obtained by that surveillance is excluded.
- 1.4 The Council policy is that specific authorisation is required for any covert surveillance investigation. There are only a small number of authorising Officers who can give this permission and these are as follows:
- Director of Law and Governance
 - Designated authorising officer – Head of Community Protection Services
- Before authorisation it will normally be necessary to consult with the relevant Deputy Director/Head of Service.
- 1.5 Before seeking authorisation you should discuss the matter with your Line Manager.

1.6 This Policy applies to all services except Trading Standards who have their own specific internal Service procedures for dealing with authorisations. However, copies of all authorisations including those for Trading Standards will be forwarded to the Director of Law and Governance for retention in a central register, and Trading Standards will simply be exempt from the provisions of this policy concerning prior authorisation.

2. Definitions

Surveillance – includes monitoring, observing or listening to persons, their movements, conversations or other activities and communications. It may be conducted with or without the assistance of a surveillance device and includes the recording of any information obtained.

Covert Surveillance – This is carried out to ensure the person who is the subject of the surveillance is unaware that it is or may be taking place. The provisions of RIPA apply to the following forms of covert surveillance:

a) Directed Surveillance – is covert but not intrusive, is undertaken for the purposes of a specific investigation which is likely to result in the obtaining of private information about a person (targeted or otherwise) e.g. checking staff are making claimed visits, time spent etc.

b) Intrusive Surveillance - Local authorities may not use hidden officers or concealed surveillance devices within a person's home or vehicle in order to directly observe that person.¹

c) Covert Human Intelligence Source (CHIS) – This is an undercover operation whereby an informant or undercover officer establishes or maintains some sort of relationship with the person in order to obtain private information e.g. test purchasing, telephone calls where the identity of the caller is withheld.

Deputy Director/Head of Service – this also includes those authorised to act on behalf of the Deputy Director/Head of Service as set out in clause 7.4.

3. RIPA Requirements

3.1 Directed surveillance only falls within the scope of the RIPA if it meets one of the following tests – criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco.

Directed surveillance that does not meet one of these tests will fall outside the scope of the RIPA. In this instance specific authorisation must be sought from the Director of Law and Governance before the activity can take place.

3.2 Basically directed surveillance must be authorised prior to it taking place, be subject to regular review and must be shown to be necessary and

¹ The Regulation of Investigatory Powers (Extension of Authorisation Provisions: Legal Consultations) Order 2010 [the 2010 Order] provides that directed surveillance carried out in certain premises (e.g. prisons, law firms, police stations) used for the purpose of legal consultations also amount to intrusive surveillance.

proportionate. RIPA does not enable a local authority to make any authorisations to carry out intrusive surveillance.

- 3.3 All non-intrusive covert surveillance and CHIS requires prior authorisation by the appropriate Local Authority Officer (as set out in this policy) before any surveillance activity takes place. The only exception to this is where covert surveillance is undertaken by way of an immediate response to events that means it was not foreseeable and not practical to obtain prior authorisation.
- 3.4 Judicial approval is also required before any internal authorisations given under RIPA take effect. Once internal authorisation has been granted a specific application to the Magistrates Court will be required.
- 3.5 A flow chart showing the authorisation procedures for covert surveillance and the relevant considerations at each stage is included in appendix 2 of this policy.
- 3.6 There is no direct sanction against Local Authorities within the RIPA for failing to seek or obtain authorisation within the organisation for surveillance, nevertheless such activity by its nature is an interference of a person's right to a private and family life guaranteed under Article 8 of the European Convention on Human Rights. The Investigatory Powers Tribunal is able to investigate complaints from anyone who feels aggrieved by a public authority's exercise of its powers under RIPA.
- 3.7 The consequences of not obtaining authorisation and Judicial approval may mean that the action is unlawful by virtue of Section 6 of the Human Rights Act 1998 i.e. a failure by the Authority to conduct this work in accordance with human rights conventions. Obtaining authorisation will ensure the Local Authority's actions are carried out in accordance with the law and satisfy the stringent and necessary safeguards against abuse.

4. Grounds of Necessity

- 4.1 The authorisation by itself does not ensure lawfulness, as it is necessary also to demonstrate that the interference was justified as both necessary and proportionate. The statutory grounds of necessity must apply for the purposes of preventing or detecting crime or of preventing disorder.

5. Proportionality

- 5.1 Once a ground for necessity is demonstrated, the person granting the authorisation must also believe that the use of an intelligence source or surveillance is proportionate, to what is aimed to be achieved by the conduct and use of that source or surveillance. This involves balancing the intrusive nature of the investigation or operation and the impact on the target or others who might be affected by it against the need for the information to be used in operational terms. Other less intrusive options should be considered and evaluated. All RIPA investigations or operations are intrusive and should be

carefully managed to meet the objective in question and must not be used in an arbitrary or unfair way.

- 5.2 Before authorising applications for directed surveillance, the authorising officer should also take into account the risk of obtaining private information about persons who are not subjects of the surveillance (collateral intrusion). Where such collateral intrusion is unavoidable, the activities may still be authorised, provided this intrusion is considered proportionate to what is sought to be achieved. Measures should be taken wherever practicable to avoid unnecessary intrusion into the lives of those not directly connected with the operation. All applications should therefore include an assessment of the risk of collateral intrusion and details of any measures taken to limit this to enable the authorising officer fully to consider the proportionality of the proposed actions.

6. Confidential Material

- 6.1 Where an investigation may reveal sensitive and confidential material this requires special authorisation by the Chief Executive or his/her delegated Authorising Officer.

7. Implementation Procedure

- 7.1 Deputy Directors/Heads of Service shall be responsible for seeking authorisation for surveillance. They have operational responsibility for ensuring compliance with the requirements of RIPA and Home Office Codes of Practice (Covert Surveillance/Covert Human Intelligence Services, which can be downloaded from the following link <http://homeoffice.gov.uk/counter-terrorism/>) in relation to covert surveillance and covert human intelligence source for their service.
- 7.2 All applications for authorisation and authorisations must be made in accordance with the procedure and on the appropriate forms: (download forms from the following link: <http://intranet.oxfordshire.gov.uk/cms/content/ripa-policy-surveillance>)
- RIPA Form 1 – Authorisation Directed Surveillance
 - RIPA Form 2 – Review of a Directed Surveillance Authorisation
 - RIPA Form 3 – Renewal of a Directed Surveillance Authorisation
 - RIPA Form 4 – Cancellation of a Directed Surveillance Authorisation
 - RIPA Form 5 – Application for Authorisation of the conduct or use of a Covert Human Intelligence Source (CHIS)
 - RIPA Form 6 – Review of a Covert Human Intelligence Source (CHIS) Authorisation
 - RIPA Form 7 – Application for renewal of a Covert Human Intelligence Source (CHIS) Authorisation
 - RIPA Form 8 – Cancellation of an Authorisation for the use or conduct of a Covert Human Intelligence Source (CHIS)
 - RIPA Form 9 – Application request for Communications Data
 - RIPA Form 10 – Application for a Judicial Order

- 7.3 All requests for authorisation must be forwarded to the Director of Law and Governance who will maintain a central record for inspection. The Director of Law and Governance will monitor the central register periodically and produce an annual report to CLT and Audit & Governance Committee. Renewal of authorisations will be for 3 months and cancellation² of authorisations should be requested as soon as possible i.e. as soon as the surveillance is no longer considered necessary. Judicial approval is required for the renewal of an authorisation but it is not required for any internal review or cancellation.
- 7.4 The Authorising Officers may authorise a person to act in their absence, the substitute will be a Senior Manager and who will have overall management responsibility for the operation/investigation. A list of all current named Authorising Officers and named substitutes will be included in the central register and appended to this Policy (Appendix 1). The Director of Law and Governance will approve all proposed Authorising Officers for inclusion in a central register. The annual report to CLT and Audit & Governance Committee will also include a review of the appropriate designated Authorising Officers.
- 7.5 All Managers have responsibility for ensuring that they have sufficient understanding to recognise when an investigation or operation falls within the requirements of RIPA. Authorising Officers will keep up to date with developments in the law and best practice relating to RIPA.
- 7.6 Authorising Officers must ensure full compliance with the RIPA Authorisation Procedure set out in the appropriate forms in 7.2 above.
- 7.7 Authorising Officers and Deputy Directors/Heads of Service will co-operate fully with any inspection arranged by the Office of Surveillance Commissioners.
- 7.8 RIPA Coordinator (Head of Community Protection Services)
The role of the RIPA coordinator is to have day-to-day oversight of all RIPA authorisations and maintain a central register of all authorisations, review dates, cancellations and renewals.
All forms should be passed through the coordinator to ensure that there is a complete record of all authorisations, contents of the forms will be monitored to ensure they are correctly filled in and the coordinator will supply quarterly statistics to the Senior Responsible Officer (Director of Law and Governance /Monitoring Officer).
The Coordinator will also monitor training requirements and organise training for new staff as appropriate, and ensure continued awareness of RIPA throughout the council via staff information on the Council's Intranet.

8. Communications Data

² All cancellations must be made in compliance with OSC guidance note 145; Office of the Surveillance Commissioner – Procedures and Guidance

- 8.1 Part I of RIPA sets out these requirements. The Council can access certain communications data only “for the purpose of preventing or detecting crime or of preventing disorder”. The exception to this is for the Fire Control Officer in an emergency for the purposes of preventing death or injury. Despite what some commentators claim the Council does not have an automatic legal right to intercept (i.e. “bug”) phones or listen into other people’s telephone conversations. The primary power the Council has is to obtain certain details (e.g. name and address) of a telephone subscriber from communication service providers (CSP) such as: BT, Vodafone, Orange etc. Monitoring of calls may be necessary for legitimate employment purposes but will be subject to the same authorisation requirements as set out in this policy.
- 8.2 The applications to obtain communications data, other than for the prevention of death or injury as in 8.1 above, must be made by a Home Office designated “Single Point of Contact (SPOC)”. Arrangements are in place to enable the authority to access communications data via a third party “SPOC”. Requests must be forwarded to the Head of Community Protection who will consult with the relevant Deputy Director/Head of Service. If the Head of Community Protection agrees the request is within the scope of RIPA he will make arrangements for the request to be processed via the SPOC.
- 8.3 The concept of the “SPOC” has been agreed between the Home Office and the CSP and introduces a verification process to ensure that only data entitled to be obtained is so obtained. Judicial approval of the application is required and the SPOC will not obtain any communications data without evidence of judicial approval.

9. Briefings

- 9.1 The Director of Law and Governance will provide updates on the RIPA legislation and best practice but Deputy Directors/Heads of Service and other Managers must be able to recognise potential RIPA situations.

10. Conclusion

- 10.1 The benefit of having a clear and regulated system of authorising all covert activities is self-evident. Surveillance by its very nature is intrusive and therefore should be subject to appropriate scrutiny at the highest level and the authorisation procedure requires that the reasons for the decision are specifically and clearly set out and the basis for the decision is readily accessible and understood. Completion of appropriate authorisations also means that in reaching a decision alternative options will also have been fully explored. Proper compliance with the procedure and properly recorded authorisations are the best defence should any of our investigations be challenged.

11. Review of Authorisations and Policy

- 11.1 The Council's "Audit and Governance Committee" will review:
- all authorised RIPA applications on a regular basis; and
 - an annual report from the Director of Law and Governance on the operation of the Policy; and
 - the policy annually to ensure it remains compliant with current legislation, relevant codes of practice and continue to meet the responsibilities of the council.

Senior Responsible Officer: Director of Law and Governance and Monitoring Officer

RIPA Coordinator: Head of Community Protection Services

Date: August 2018

Next Review Date: August 2019

Appendix 1 – Authorising Officers and Named Substitutes

Authorising Officer – Nick Graham, Director of Law and Governance
(Named substitute - Glenn Watson, Principal Governance Officer)

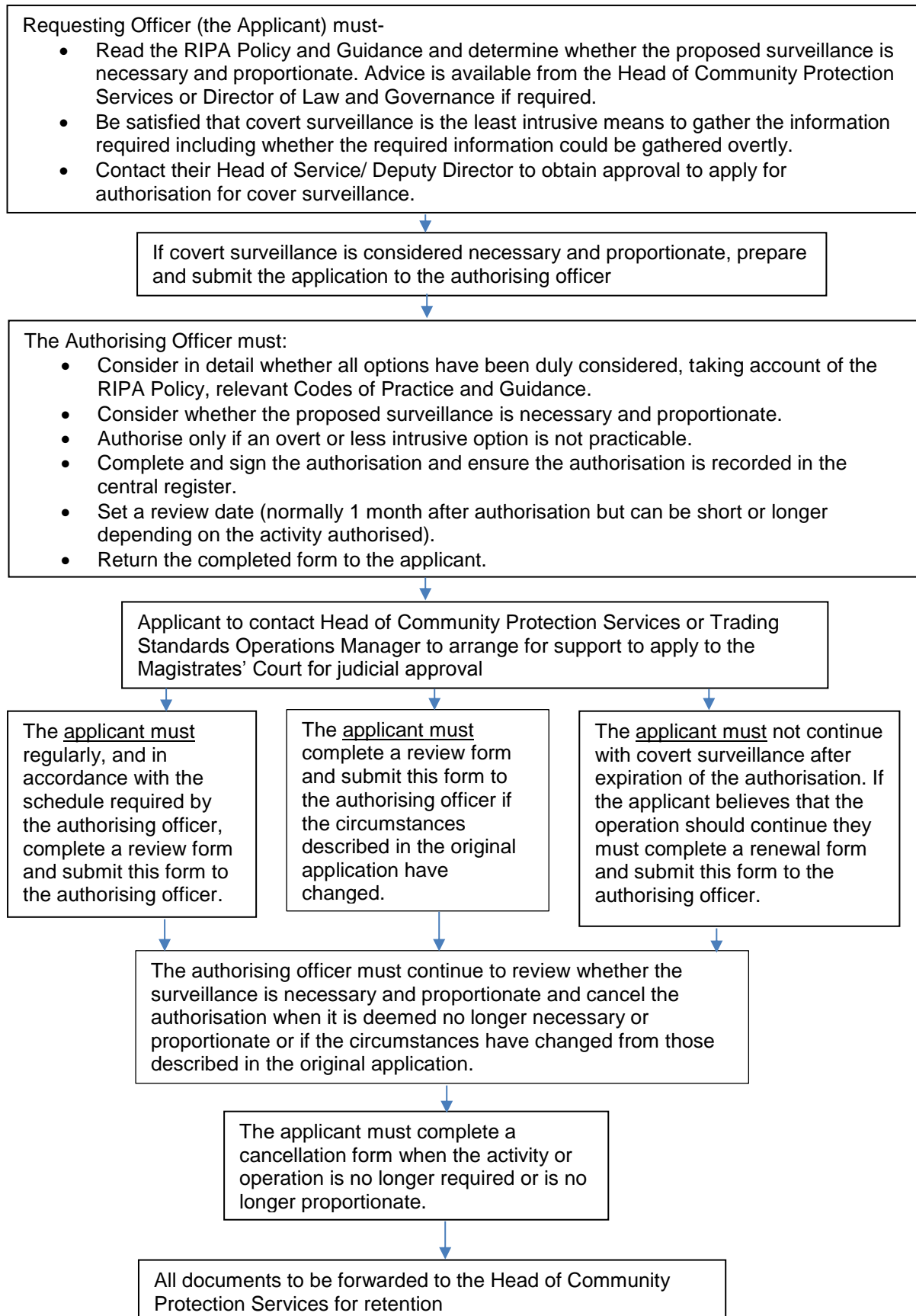
Authorising Officer – Richard Webb, Head of Community Protection Services
(Named substitute - Jody Kerman, Trading Standards Operations Manager)

Authorising Officer and Named Substitute – Lorna Baxter Director of Finance and S151 Officer

Confidential Material Special Authorisation – Peter Clark, Chief Executive**
(From 1st October 2018) Yvonne Rees, Chief Executive**

**Named Substitute – Lorna Baxter Director of Finance and S151 Officer

Appendix 2- Flow Chart of Authorisation Procedures and Considerations for Covert Surveillance



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Division(s):

AUDIT & GOVERNANCE COMMITTEE – 12 SEPTEMBER 2018

ANNUAL MONITORING OFFICER REPORT

Report by the Monitoring Officer

Introduction

1. The Audit and Governance Committee is responsible for promoting standards of conduct for elected councillors and co-opted members and for ensuring the integrity of the democratic decision-making process. Consequently, the Monitoring Officer reports annually to this Committee on relevant actions and issues that have occurred in the previous year. This report therefore summarises certain activities for the year 2017/18 i.e. immediately before and following the May 2017 County Council Election.

The Committee's responsibilities for ethical standards

2. The terms of reference of the Audit and Governance Committee contain the following roles:
 - To promote high standards of conduct by councillors and co-opted members
 - To grant dispensations to councillors and co-opted members from requirements relating to interests set out in the code of conduct for members
 - To receive report from member-officer standards panels appointed to investigate allegations of misconduct under the members' code of conduct.
 - To advise the Council as to the adoption or revision of the members' code of conduct.
3. This regime, stemming from the Localism Act 2011, demonstrates the Council's expectation that high standards of conduct will continue to be promoted and maintained among elected councillors and co-opted members.

Standards in Oxfordshire – overview of arrangements

4. The county, district and city councils in Oxfordshire maintain harmonised **Codes of Conduct**. This has the benefit of creating transparency and accountability for the public and also clarity of expectation for councillors who may also be members of more than one authority. This harmonisation is itself a key aspect in promoting and maintaining high standards across Oxfordshire. The Code is also held out to parish and town councils as a model to follow.

5. While each authority has adopted slightly different approaches to **handling complaints** about councillor conduct, there is a common theme of proportionality in these arrangements, as envisaged by the Localism Act. The Council has appointed an Independent Person to assist the Monitoring Officer in reviewing complaints about councillors.
6. In brief, the complaints process adopted by Oxfordshire County Council is as follows:
 - Each complaint is considered by the Monitoring Officer who, after consultation with the Independent Person, decide whether it merits formal investigation
 - The Monitoring Officer may seek to resolve issues informally without the need for formal investigation
 - The Monitoring Officer will determine the procedure to be adopted if a formal investigation is considered appropriate and this may involve the appointment of an Investigating Officer
 - The member complained of will normally be provided with a copy of the complaint
 - Following an investigation, a report will be prepared for the Monitoring Officer, copied to the member concerned
 - Following consultation with the Independent Person the Monitoring Officer may decide that the report is sufficient and that no further action is required
 - If there is evidence of failure to comply with the Code, the Monitoring Officer will either seek local resolution or constitute a local hearing through a Member Advisory Panel
 - A Members' Advisory Panel may only recommend certain sanctions:
 - Censure or reprimand
 - Publish its findings
 - Report its findings to full Council
 - Recommend removal from relevant body e.g. Cabinet, Committee etc.
 - Recommend training
 - Withdraw facilities
 - There is no right of appeal
7. The Members' Advisory Panel will be formed of members of this Committee.
8. In addition to these measures, the Council has implemented Register of Interests arrangements that are fully compliant with the Localism Act and subsequent government guidance and regulations.

Democratic process and post-election induction

9. Clarity and accountability in the decision making of the Council is an important bedrock for good member governance. Key to this is the diversity of representation and experience of county councillors.

10. The full County Council election was held on 4 May 2017. The poll and the count were successfully conducted in accordance with electoral law. The Electoral Commission, in an interview with the Returning Officer, was satisfied that the Council's election planning was sound and met the Electoral Commission's best practice.
11. Following the election, and to support councillors in their democratic roles, a Welcome Event was held on 12 May and a subsequent induction programme took place over the summer and autumn. This included service specific overviews, budgetary matters and briefings on the members' code of conduct, planning code, the Constitution and members' rights to information.
12. At the Annual Meeting in May 2017, a Leader and a Chairman were duly appointed as were council committees and their memberships, in accordance with local government legislation and the Council's Constitution.

Decision making governance

13. Given the Committee's role in overseeing good member governance, it is also appropriate to update this Committee from time to time on the exercise of aspects of this structure including:
 - Closed sessions – instances where the public have been excluded from meetings by virtue of the business being transacted
 - Cabinet Forward Plan – instances in which exceptions have occurred to the inclusion of items in the Forward Plan
 - Scrutiny call-in – instances where exemptions to the call-in procedures have been awarded by virtue of urgency of the business in question
 - Chief Executive decisions – instances where the Chief Executive has used delegated powers to undertake any function of the Cabinet

Closed Sessions

14. The public can be excluded from the whole or part of a meeting if the meeting is to discuss confidential or exempt information (as set out in Schedule 12A of the Local Government Act 1972, as amended). The Monitoring Officer, in his role of ensuring lawful decision making, has reviewed the number of times this has happened over the past year. The results are set out in the **Annex 1** to this report. In each case, the Monitoring Officer is satisfied that the reasons for closure were appropriate.

Cabinet – Forward Plan

15. Items for decision by the Cabinet over any forthcoming four-month period are included in a Forward Plan. Occasionally, decisions are needed on items that have not been included on a Forward Plan. These are dealt with by General Exception notices to the Forward Plan. The Monitoring Officer reviewed the instances in which this occurred and was satisfied with the reasons in each case. **Annex 2** lists the instances. It also lists additional non-key-decision items. There was one item agreed as a matter of special urgency.

Scrutiny Call-In

16. The Council's Scrutiny Procedure Rules (Rule 17a) allow for executive decisions to be **exempted from call-in** if they are deemed urgent and any delay would prejudice the council's interests. There was **one such instance** in 2017/18, as follows, with the reason for urgency given:

- Queen Street Experimental Traffic Regulation Order – “any delay would seriously prejudice the Council's interests, in that it would cause delay in the implementation of the TRO, prior to the new Westgate centre opening on Tuesday 24th October.”

Chief Executive – ‘Cabinet Decisions’

17. Under the Council's Constitution, the Chief Executive has delegated powers to undertake any function of the Cabinet after appropriate consultation. Any exercise of this function is reported to the Cabinet. During the year 2017/18 this delegation was exercised on 11 occasions; all were related to exemptions to the requirements of the Contract Procedure Rules and required (and received) a legal (Director of Law & Governance) and financial (Director of Finance) appraisal.

The Monitoring Officer

18. Monitoring Officers from Oxfordshire's county and district councils have continued to meet together to discuss issues of common concern. This comparison of experiences has been particularly useful in monitoring the operation of the harmonised codes of conduct and the registration of members' interests. It also proved useful through the development of Special Interest Groups – which involve the sharing of good practice around a range of legal, democratic and electoral issues which are then reported to the overall Monitoring Officer group. This year also included meetings in preparation for the introduction of the General Data Protection Regulations.

Modern.Gov, transparency and access

19. Modern.Gov is the software package adopted by the Council (and also used in some district councils across Oxfordshire) for creating, tracking and publishing council meeting agendas, reports and minutes. It also contains a module for elections which was successfully used in the May 2017 county council elections both for displaying results and subsequently publishing councillors' web pages.

20. It has also been used successfully in-year for managing the Council's Forward Plan and for publicising meetings and agendas, committee appointments, as well as appointments to outside bodies. The system is also able to publish (on the website) parish council contact names and details.

To Promote and Maintain High Standards of Conduct by Councillors and Co-opted Members

21. It is a core duty of this Committee to promote and monitor high standards of conduct by councillors and co-opted members.
22. This formed a core part of the councillor induction programme (in terms of code of conduct training). But advice was also issued as regards:
 - ‘Purdah’ guidance on councillor responsibilities with regard to the use of council publicity and resources during the 2017 General and District Council election periods
 - Disclosable Pecuniary Interests
 - Dispensations with regard to the February budget setting meeting

To advise the Council as to the adoption or revision of the members’ code of conduct.

23. To enable the Committee to advise the Council on adopting or revising a members’ code of conduct, it is important that the Committee is kept up to date with any issues arising from the operation of the code, both in terms of experience and any future amendments to the regulations or legislation.

Declaration of interests

24. There is still a requirement to declare disclosable pecuniary interests at meetings if they are not otherwise included in the Register and to register them thereafter. Declarations need to be made unless a dispensation has been given. It is useful for this Committee to be updated on the instances in which these provisions have been observed.
25. The usual safeguards are in place including a reminder to members of the need to declare interests at all meetings, and all agendas contain a standard item headed “Declarations of Interest”. The item refers to detailed guidance attached to the agenda setting out how and when to declare an interest.

Number and Outcome of Applications for Dispensations

26. There have been no applications for dispensation.

The Number and Nature of Complaints of Breaches of the Code

27. There were **two** complaints against members during 2017-18. In both of these complaints, the complainants’ dissatisfaction in part stemmed, I believe, from a particular expectation of councillor conduct. Both demonstrated the importance of the space within which councillors work on an individual and community level. In both of these cases, it was not found that the Code of Conduct had been breached.

Complaint/allegation	Outcome
Alleged inaction in relation to a constituent's concerns	No breach found. Factual basis not agreed and 'councillor performance' in a role is not in itself a Code of Conduct matter. Complaint was also considerably later than the events to which they related.
Alleged dismissive comments by councillor in a community-meeting setting.	Factual basis of alleged conduct not agreed on evidence; alleged conduct more in keeping with robust local discussion and therefore no breach.

Ethical standards – call for evidence

28. This Committee, via a group of members appointed for the purpose, responded during the year to the Government's 'call for evidence' on potential changes to the ethical standards regime for elected politicians. The Committee endorsed the Group's views on, for example, the desirability of greater clarity in model Codes as what constitutes bullying behaviours. This also coincided with Full Council's decision in December 2017 to deplore the use of social media and online platforms to denigrate members of the public and elected politicians.

County Council Elections & Post Election Governance

29. It was important that post-election governance be carried out. This duly happened including:
- Declarations of acceptance of office: the vast majority of the statutory declarations of acceptance of office were completed at the County Election Count on 5 May; with the remainder at the 12 May Welcome Event.
 - Register of members' interests: all returning and newly elected councillors have either submitted or updated their register entries.
 - Biographical details: all members were encouraged to give a pen-portrait biography for inclusion on the Council's website to help the public recognise them and what they are bringing to their roles
 - Access to information: In addition to two sessions on councillors' access rights to information, all councillors have been linked to a dedicated 'Councillor Link Officer' in Democratic Services, to act as a route-finder for councillors. The Council's Locality Meetings for councillors in those defined areas have also be a means of gaining and informing the councillor perspective.

Governance Review

30. Following a decision of both Council and Cabinet, a Governance Review Task Group of this Committee has been formed to review potential future forms of local governance, including a potential return to a committee system. This Group has been briefed on the legal basis for any options and has undertaken a series of fact-finding and exploratory visits to other local authorities which have operated differing decision-making systems. The visits were preceded by a whole council survey seeking councillor views on the current and potential decision-making arrangements. During Autumn 2018 a whole council workshop will take place and the Task Group will then reconvene to consider all the evidence and formulate recommendations.

Summary

31. This annual review highlights the progress that has been made, particularly following the May 2017 elections, in implementing the code of conduct for members, in promoting and maintaining high standards of conduct and public accountability. The commitment to encouraging high standards continues and will form a key part of the future decision-making arrangements, and in the partnership between Cherwell District Council and this Council agreed in summer 2018.

RECOMMENDATIONS

32. **The Committee is RECOMMENDED to consider and endorse the report.**

Nick Graham
Chief Legal Officer and Monitoring Officer
Contact: 01865 323910

Contact officer: Glenn Watson, Principal Governance Officer, 07776 997946.

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AUDIT & GOVERNANCE COMMITTEE WORK PROGRAMME – 2018/19

14 November 2018

Ernst & Young: Annual Audit Letter (David Guest)
Treasury Management Mid Term Review (Joseph Turner)
Governance of the Housing and Growth Deal (Lorna Baxter)
Update on Carillion Recovery Plan (Alexandra Bailey)
Counter-fraud Update (Sarah Cox)
Review of effectiveness of internal audit (Glenn Watson)
Terms of Reference amendment for Pension Fund Committee (Sean Collins)

9 January 2019

Internal Audit Plan – Progress Report (Sarah Cox)
Counter-fraud Update (Sarah Cox)
Ernst & Young - Audit Plan (David Guest)
Treasury Management Strategy Statement and Annual Investment Strategy for 2019/20 (Tim Chapple)
Constitution Review (Glenn Watson)
Local Code of Corporate Governance (Glenn Watson)

6 March 2019

Ernst & Young – 2018/19 Audit Plan (David Guest)
Scale of Election Fees and Expenditure (Glenn Watson)
Progress update on Annual Governance Statement Actions (Glenn Watson)
Audit Committee Annual Report to Council 2018 (Sarah Cox)

8 May 2019

Annual Governance Statement (Glenn Watson)
Annual Report of the Chief Internal Auditor 2018/19 (Sarah Cox)
Internal Audit Strategy & Annual Plan 2019/20 (Sarah Cox)
Audit Committee Annual Report to Council 2018 (Sarah Cox)
Annual Scrutiny Report (Katie Read)
Ernst & Young - Progress Report (David Guest)
OFRS Statement of Assurance 2018-19 (Paul Bremble)
Draft narrative statement and Accounting Policies for inclusion in the Statement of Accounts (Hannah Doney)

17 July 2019

Statement of Accounts 2018/19 (Lorna Baxter)
Ernst & Young – Final Accounts Audit (David Guest)
Treasury Management Outturn 2018/19 (Tim Chapple)
Internal Audit Charter (Sarah Cox)
Counter-fraud Plan 2019/20 (Sarah Cox)

11 September 2019

Local Government Ombudsman's Review of Oxfordshire Co Co (Nick Graham)
Internal Audit Plan – Progress Report (Sarah Cox)
Surveillance Commissioner's Inspection and Regulation of Investigatory Powers Act (Richard Webb)
Monitoring Officer Annual Report (Nick Graham)

Ernst & Young – 2017/18 Annual Audit Letter (David Guest)

Standing Items:

- Audit Working Group reports (Sarah Cox)
- Audit & Governance Committee Work Programme – update/review (Committee Officer/Chairman/relevant officers)