



Audit and Standards Committee

Date and Time - **Monday 5 December 2022 – 6:30pm**

Venue - **Council Chamber, Town Hall, Bexhill-on-Sea**

Councillors appointed to the Committee:

B.J. Drayson (Chair), R.B. Thomas (Vice-Chair), J. Barnes, Mrs M.L. Barnes, P.C. Courtel, K.M. Harmer (ex-officio), Mrs E.M. Kirby-Green, L.M. Langlands and C.A. Madeley.

Audit Independent Person: Mr Patrick Farmer

AGENDA

1. MINUTES

To authorise the Chair to sign the Minutes of the meeting of the Audit and Standards Committee held on 26 September 2022 as a correct record of the proceedings.

2. APOLOGIES FOR ABSENCE

3. ADDITIONAL AGENDA ITEMS

To consider such other items as the Chair decides are urgent and due notice of which has been given to the Head of Paid Service by 12 Noon on the day of the meeting.

4. DISCLOSURE OF INTERESTS

To receive any disclosure by Members of personal and disclosable pecuniary interests in matters on the agenda, the nature of any interest and whether the Member regards the personal interest as prejudicial under the terms of the Code of Conduct. Members are reminded of the need to repeat their declaration immediately prior to the commencement of the item in question.

PART A - STANDARDS REPORTS

5. LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN COMPLAINTS MONITORING (Pages 3 - 10)

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6. **CODE OF CONDUCT COMPLAINTS MONITORING AND OTHER STANDARDS MATTERS** (Pages 11 - 18)
7. **CODE OF CONDUCT** (Pages 19 - 22)
8. **REVIEW OF THE ARRANGEMENTS FOR DEALING WITH MEMBER COMPLAINTS, INVESTIGATIONS PROCEDURE AND HEARINGS PROCEDURE** (Pages 23 - 44)

PART B - AUDIT REPORTS

9. **PROPOSED AMENDMENTS TO THE CONSTITUTION** (Pages 45 - 48)
10. **ROTHER DC HOUSING COMPANY GOVERNANCE MONITORING** (Pages 49 - 60)
11. **INTERNAL AUDIT REPORT TO 30 SEPTEMBER 2022** (Pages 61 - 82)
12. **REVISED ANTI-FRAUD AND CORRUPTION FRAMEWORK** (Pages 83 - 122)
13. **PROCUREMENT AND CAPITAL PROGRAMME AUDITS - MANAGEMENT RESPONSES UPDATE** (Pages 123 - 126)
14. **WORK PROGRAMME** (Pages 127 - 128)

Malcolm Johnston
Chief Executive

Agenda Despatch Date: 25 November 2022

Invitees in respect of Standards Related Reports only:

Independent Persons: Mr Robert Brown and Mrs Rose Durban.

Parish/Town Councillor Representative(s): Councillors Mrs W.M. Miers and K. Robertson

Rother District Council

Report to: Audit and Standards Committee

Date: 5 December 2022

Title: Local Government and Social Care Ombudsman
Complaints Monitoring

Report of: Mark Adams, Customer Services Manager

Purpose of Report: To receive an update on the number of Local Government and Social Care Ombudsman complaints received since the last report in June 2022.

Officer

Recommendation(s): It be **RESOLVED:** That the report be noted.

1. Details of the complaints made to the Local Government and Social Care Ombudsman (LGSCO) are reported to the Committee in June and December each year. Five cases have been determined since the Committee last considered these complaints in June as detailed below:

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN COMPLAINTS		
REFERENCE	DETAILS OF THE ALLEGATION	OUTCOME
21 014 237	Customer raised grievance regarding planning permission for a site close to their homes. They alleged the Council ignored the comments and objections made by residents.	The Ombudsman will not investigate this complaint because they are unlikely to find fault in how the Council made its decisions.
22 007 602	Customer alleges a Councillor breached the Council's code of conduct in relation to a disclosable interest in a planning application.	The Ombudsman will not investigate this complaint as they were satisfied how the Council's Monitoring Officer dealt with this complaint and are unlikely to find fault.
22 007 974	Customer alleges the Council failed to fully investigate and take action against a Councillor who allegedly broke the Code of Conduct.	The Ombudsman will not investigate this complaint about the Council's decision on a complaint that a Councillor breached the Code of Conduct. There has been no evidence of fault in the way the Council made its decision.

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN COMPLAINTS		
REFERENCE	DETAILS OF THE ALLEGATION	OUTCOME
22 009 056	Customer alleges the Council failed to comply with the terms of a Section 106 planning obligation agreed with a Parish Council, landowners and a developer. They are aggrieved that both the Council and the Parish Council have spent money seeking legal advice on the issue.	The Ombudsman will not investigate the complaint about the Council's refusal to ensure compliance with the terms of a Section 106 planning obligation. This is because the Council's actions have not caused significant injustice. The Ombudsman cannot consider the impact of its actions on the Parish Council- a signatory to the Section 106 agreement. The law does not allow the Ombudsman to investigate the Council's use of public money to fund legal advice relating to the issue.
22 007 738	The Customer complains the Council: a) allowed smaller separation distances between the new house and the boundary with their property than was shown on the planning permission; and b) delayed in dealing with their complaint.	The Ombudsman will not investigate the complaint as there is not enough evidence of fault in the Council's planning enforcement process to warrant investigation. They do not investigate councils' internal complaints processes where they are not investigating the core issue giving rise to the complaint.
22 002 814	Customer complained about the way the Council considered and approved a planning application.	The Ombudsman found some fault about the way the Council considered and approved a planning application for a development on recreation ground. The planning officer's report failed to refer to the total number of parking spaces applied for, but this caused no injustice. The Council failed to follow its own complaints

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN COMPLAINTS		
REFERENCE	DETAILS OF THE ALLEGATION	OUTCOME
		procedure. The agreed action remedies the injustice caused.

2. A Total of six complaints were made to the LGSCO covering the period 28 May 2022 to 10 November 2022, of which:

- one was upheld (Council's actions were at fault)
- 0 were not upheld (No fault found in the Council's actions)
- five cannot be investigated

Details of some of these complaints have been published on the local government and social care ombudsman's website:

<https://www.lgo.org.uk/decisions>

The learning outcome for Complaint 22 002 814 has been put in place to make the officer aware of the correct procedure to follow when responding to a formal complaint.

3. Rother received 73 non-ombudsman complaints from 28 May 2022 to 10 November 2022, of which:

- 38 of these were non-complaints (treated as department service request)
- one was treated as vexatious
- 10 were resolved at initial stage (non-formal complaint resolution)
- nine were stage 1 Complaint
- six were stage 2 Complaints
- nine are pending investigation/response

NON-OMBUDSMAN COMPLAINTS			
REFERENCE	DETAILS OF THE ALLEGATION	OUTCOME	DEPARTMENT
Stage 1-5158	Customer alleges waste contractor is using their port-a-loo in the front garden.	Resolved at initial stage	Waste and Recycling
Stage 1-6024	Customer alleges that their letters asking for an update have been unanswered since October 2021.	Resolved at initial stage	Planning
Stage 1-5409	Customer alleges they have had two repeated missed recycling collections and there has been no action from the Council to address these.	Resolved at initial stage	Waste and Recycling

NON-OMBUDSMAN COMPLAINTS			
REFERENCE	DETAILS OF THE ALLEGATION	OUTCOME	DEPARTMENT
Stage 1-8422	Customer alleges poor handling of her housing case and delays in assessment and assessment not based on correct information.	Resolved at initial stage	Housing
Stage 1-5175	Customer alleges poor handling of their housing case and missed scheduled phone appointments from housing officer.	Resolved at initial stage	Housing
Stage 1-1308	Customer alleges the Council are failing to provide them with a domestic waste collection from a mutually agreed location.	Escalated to Stage 2 (ref STAGETWO-4161)	Waste and Recycling
Stage 1-3425	Customer aggrieved with the delay of an overpayment of Council tax following vacation of property.	Resolved at initial stage	Council Tax
Stage 1-5717	Customer aggrieved with the handling of her garden waste refund.	Resolved at initial stage	Waste and Recycling
Stage 1-1217	Customer aggrieved with the banding of their housing register decision.	Resolved at initial stage	Housing
Stage 1-4683	Customer aggrieved with the length of time taken to remove their broken garden waste bin.	Resolved at initial stage	Waste and Recycling
Stage 1-6648	Customer aggrieved their bin is not being returned to a safe place following collection and left in a potentially dangerous position on the highway.	Resolved at initial stage	Waste and Recycling
Stage 1-4910	Customer alleges the Council failed to follow the correct protocol for public consultation in relation to the Bexhill Town Hall Redevelopment Project.	Not upheld	Corporate Services

NON-OMBUDSMAN COMPLAINTS			
REFERENCE	DETAILS OF THE ALLEGATION	OUTCOME	DEPARTMENT
Stage 1-0047	Customer complained regarding the conduct of a Planning Officer.	Partially upheld	Planning
Stage 1-0648	Customer alleges a Councillor breached the Council's Code of Conduct in relation to a disclosable interest in a planning application.	Not upheld	Planning
Stage 1-2625	Customer alleges the Council has a policy requiring tenants to be taken to court by their landlords before they will be helped.	Not upheld	Housing
Stage 1-9768	Customer alleges discrimination in relation to the handling of their planning application to other applications.	Not upheld	Planning
Stage 1-7011	Customer alleges numerous failures when dealing with planning, including delayed response to emails, not undertaking enforcement action and passing on sensitive information.	Partially upheld	Planning
Stage 1-3379	Customer alleges poor customer services following call regarding not returning of bin.	Partially upheld	Customer Services
Stage 1-7085	Customer alleges property placement not in line with planning application and they are suffering from loss of amenity.	Not upheld	Planning
Stage 1-1965	Customer alleges numerous failures in relation to how it has dealt with a planning application and noise complaint.	Partially upheld	Planning / Environmental Health

NON-OMBUDSMAN COMPLAINTS			
REFERENCE	DETAILS OF THE ALLEGATION	OUTCOME	DEPARTMENT
STAGETWO-0961	Customer alleges the Council failed to act on a planning enforcement complaint.	Not upheld	Planning and Environmental Enforcement
STAGETWO-1426	Customer alleges the Council failed to follow the correct protocol for public consultation in relation to the Bexhill Town Hall Redevelopment Project.	Partially upheld	Corporate
STAGETWO-5959	Customer alleges the Council failed to act on a planning enforcement complaint.	Not upheld	Planning and Environmental Enforcement
STAGETWO-2319	Customer alleges a Councillor breached the Council's Code of Conduct in relation to a disclosable interest in a planning application.	Not upheld	Planning
STAGETWO-3807	Customer alleges the Council has a coercive policy toward private tenants requiring them to take their landlords to court before they will be offered alternative housing.	Not upheld	Housing
STAGETWO-4161	Customer alleges the Council are failing to provide them with a domestic waste collection from a mutually agreed location.	Not upheld	Waste & Recycling

4. A total of 19 stage 1 complaints, of which:
- 10 were resolved at initial stage (over telephone)
 - 0 were upheld
 - five were not upheld
 - four were partially upheld

There are currently eight stage 1 complaints pending investigation/response.

A total of six complaints were stage 2 complaints (responded to formally by Head of service), of which:

- 0 were upheld

- 5 were not upheld
- 1 were partially upheld

There is one stage 2 complaint pending a response.

	AVERAGE RESPONSE TIME (DAYS)	MAX TIME (DAYS)
All Complaints	14	96
Stage 1	24	96
Stage 2	33	62

Conclusion

5. The Committee is asked to note the report.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	External Consultation	No
Environmental	No	Access to Information	No
Risk Management	No	Exempt from publication	No

Chief Executive:	Malcolm Johnston
Report Contact Officer:	Mark Adams
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Appendices:	None
Relevant Previous Minutes:	None
Background Papers:	None
Reference Documents:	None

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Rother District Council

Report to:	Audit and Standards Committee
Date:	5 December 2022
Title:	Code of Conduct Complaints Monitoring and Other Standards Matters
Report of:	Lorna Ford, Monitoring Officer
Purpose of Report:	To receive an update on the number of complaints received and processed and other standards related matters since the last report in June 2022.
Officer	
Recommendation(s):	It be RESOLVED : That the report be noted.

Introduction

1. This routine report sets out details of the complaints received and processed since the Committee's last meeting held in June 2022 where complaints were considered; as agreed by the Committee, this report presents cases on a six-monthly rolling basis. It also advises the Committee of other standards related matters arising since the Committee's last meeting.

Complaints Received

2. Since the last meeting there have been 12 new Code of Conduct (CoC) complaints concerning six District Councillors and eight Parish Councillors; of the 14 cases, three were dismissed (C22-06, C22-07, C22-09), two were referred for investigation, one of which was found to have breached the local authority's code (C22-04(1)), the other there was no finding of a breach (C22-04(2)), one attempted local resolution that was not successful which ended up being dismissed (C22-01) and eight other local resolutions involving apologies, training and consultancy (C22-03, C22-05, C22-08, C22-11(a)(b)(c), C22-12, C22-13). The view of one (or both) of the Council's Independent Persons (IP) was sought and concurred with the proposed action in each case; brief details of each case are provided at Appendix 1.
3. During this time, I have also received two non-valid complaints against 1) a Rother District Councillor for sharing the details of a press release, issued by the Council, concerning a successful planning enforcement prosecution, on a local neighbourhood social media site and 2) governance issues relating to a currently dysfunctional parish council from where the last five complaints have all originated. A complaint regarding the actions of a Parish Clerk was also received and the complainant was advised to contact the Parish in question.

Other Standards Matters

Training

4. The Independent Persons (IPs) attended a remote conference for Independent Persons on 29 June 2022 and met with the Monitoring Officer (MO) and Deputy to consider the feedback and any proposed resulting change in practice. As a

result of these discussions it is considered necessary to make some minor amendments to the “Arrangements for dealing with Member Complaints” document found elsewhere on this Agenda to clarify the role of the IPs when speaking to Subject Members.

5. The MO and Deputy have also attended two remote training sessions, the first in July organised by Lawyers in Local Government and the second, the Annual Standards Conference for MOs organised by Hoey Ainscough Associates in November. Issues included:
 - When the code applies
 - Disrespect versus free speech
 - Registration and disclosure of DPIs
 - Sanctions / enforcement of high ethical standards
 - Working with town and parish councils
6. Two training sessions based on the Local Government Association’s (LGA) Model Code of Conduct have taken place remotely specifically targeted at parish and town councils (P&TCs). The sessions took place on 3 and 7 November and in total 24 P&T Councillors attended and 7 Clerks / Deputy Clerks from 12 different P&TCs. This is a little disappointing given that there are approximately 274 P&T Councillors across the district and the attendance represents just 8%.
7. These sessions focused on the LGA’s Model Code of Conduct, which although the majority of P&TCs have not adopted this code, the principles and standards of behaviour are those expected of all Councillors and provided a helpful framework for the sessions. Feedback was invited and this proved to be positive, with suggestions for future sessions including declarations of interest and the complaints process. One parish council has also decided to consider adopting the LGA Model Code at its next meeting.
8. Given the proximity to the District Council elections in May, it is considered appropriate to wait until the elections have taken place and then run a session for District Councillors, as part of the general induction programme. Whilst the P&TCs are also up for re-election in May 2023, there tends to be less churn at this level and there has been a noticeable increase in the number of complaints arising from the P&TCs of late.

Risk Management

9. The Audit and Standards Committee has a duty to promote and maintain high standards of conduct by Members and co-opted Members of the Council. Monitoring the number of complaints received and the nature of the complaints will enable the Committee to identify any trends and make recommendations for additional training and guidance as appropriate. Failure to do so could result in poor Member conduct, an increase in complaints administration and reputational damage for the Council.

Conclusion

10. The Committee is asked to consider the report and agree any additional recommendations as appropriate.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	Consultation	No
Environmental	No	Access to Information	No
Risk Management	Yes	Exempt from publication	No

Deputy Chief Executive:	Lorna Ford, Deputy Chief Executive and Monitoring Officer
Report Contact Officer:	Lisa Cooper, Democratic Services Manager and Deputy Monitoring Officer
e-mail address:	lisa.cooper@rother.gov.uk
Appendices:	Appendix 1 – Member Complaints Summary
Relevant Previous Minutes:	None.
Background Papers:	None.
Reference Documents:	None.

MEMBER CODE OF CONDUCT COMPLAINTS SUMMARY SHEET

REF	DATE RECEIVED	COMPLAINANT	SUBJECT MEMBER	NATURE OF COMPLAINT, DECISION AND COMMENT
C22-02-01 C22-02-02	27/05/22	Member of the public	Rother District Councillor	<p>Complaint: That during an Annual Parish Assembly meeting the District Councillor disclosed personal information regarding the residential status of the complainant with reference to the electoral register. There was no formal breach of GDPR or data protection in this case.</p> <p>Decision: Attempted local resolution (apology) / dismissed.</p> <p>Outcome / Comment: The facts of the incident were disputed by both parties, however, the allegations were not serious enough to warrant an investigation. An apology was sent, which was not accepted by the complainant, who submitted a further complaint. Despite one of the Council's IPs meeting both parties, there was no satisfactory outcome to this complaint on either side.</p>
C22-03	31/05/22	Member of the public	Rother District Councillor	<p>Complaint: That the Subject Member attempted to use their position inappropriately and made the complainant feel intimidated.</p> <p>Decision: Local Resolution; written apology.</p> <p>Outcome / Comment: The Subject Member wrote to all relevant parties that they had contacted, apologising for the direct contact.</p>
C22-04 (1)	9/06/22 & 12/06/22	Two Bexhill-on-Sea Town Councillors	Councillor S. Blagrove, Bexhill Town Councillor	<p>Complaint: That the Subject Member bullied, harassed, intimidated and showed a lack of respect to the Town Clerk.</p> <p>Decision: Referred for external investigation and found to have breached the Code of Conduct.</p> <p>Outcome / Comment: Following the outcome of the investigation Councillor Blagrove resigned as a Bexhill Town Councillor, therefore no further action was taken.</p>

REF	DATE RECEIVED	COMPLAINANT	SUBJECT MEMBER	NATURE OF COMPLAINT, DECISION AND COMMENT
C22-04 (2)	9/06/22 & 12/06/22	Two Bexhill-on-Sea Town Councillors	Bexhill-on-Sea Town Councillor	<p>Complaint: That the Subject Member bullied, harassed, intimidated and showed a lack of respect to the Town Clerk.</p> <p>Decision: Referred for an external investigation.</p> <p>Outcome / Comment: No finding of a breach of the Code of Conduct but advised regarding future conduct and behaviour.</p>
C22-05	29/07/22	Local authority officer	Parish Councillor	<p>Complaint: The Subject Member attended the officer's home address to raise concerns over reports of an animal in distress and the management of a countryside park and was allegedly intimidating and aggressive.</p> <p>Decision: Local Resolution; written apology, requirement to attend training.</p> <p>Outcome / Comment: The Subject Member apologised for attending the officer's home address and agreed not to do so in the future. The apology was accepted by the complainant. The Subject Member also attended the remote training session on the Code of Conduct on 3 November 2022.</p>
C22-06	09/08/22 (1) 12/08/22 (2)	Parish Council (1) Member of the public (2)	Rother District Councillor	<p>Complaint: That the Subject Member used their position whilst chairing a committee meeting to confer on or secure for a fellow Councillor an advantage and did not declare an interest in the matter.</p> <p>Decision: Dismissed.</p> <p>Outcome / Comment: There was no evidence of the allegations and the Subject Member had received advice and carefully considered their position prior to the meeting.</p>

REF	DATE RECEIVED	COMPLAINANT	SUBJECT MEMBER	NATURE OF COMPLAINT, DECISION AND COMMENT
C22-07	09/08/22	Parish Council	Rother District Councillor	<p>Complaint: That the Subject Member was predetermined at a Planning Committee meeting evidenced by reading from a prepared script during the consideration of a planning application.</p> <p>Decision: Dismissed; advice.</p> <p>Outcome / Comment: The Subject Member had prepared notes on the application as part of their usual preparation for Planning Committee meetings. A copy of the notes was not provided and the Member assured the Deputy Monitoring Officer (DMO) that they had not been predetermined. Advice given with regards to future meetings and perceptions.</p>
C22-08	09/08/22	Parish Council	Rother District Councillor	<p>Complaint: That the Subject Member was predetermined at a Planning Committee meeting evidenced by reading from a prepared script during the consideration of a planning application.</p> <p>Decision: Local Resolution; training.</p> <p>Outcome / Comment: The Subject Member had prepared a written script and whilst assured the DMO that they were not predetermined, acknowledged that the perception may have been different. A copy of the script was provided which corroborated what was verbalised at the meeting. The Subject Member was happy to accept further training and guidance on predetermination and planning matters having only served on the Committee for just over a year.</p>
C22-09	30/08/22	Member of the public	Rother District Councillor	<p>Complaint: That the Subject Member addressed a meeting of the Planning Committee as the applicant despite having a Disclosable Pecuniary Interest (DPI), which under the Council's Code of Conduct was prohibited.</p> <p>Decision: Dismissed.</p>

REF	DATE RECEIVED	COMPLAINANT	SUBJECT MEMBER	NATURE OF COMPLAINT, DECISION AND COMMENT
				Outcome / Comment: This was an unfortunate misinterpretation of the Code of Conduct by officers and a failure to recognise that the Member should not have been permitted to address the Planning Committee with a DPI. It was felt in this case that the SM was not given the correct advice by officers and was not entirely to blame for their attendance and speaking at the committee meeting.
C22-11	18/11/22	Parish Clerk	Parish Councillor x3 (a) (b) and (c)	<p>Complaint: Allegations of disrespect, bullying, disrepute and potential non-declaration of interests.</p> <p>Decision: This Parish Council is currently dysfunctional with frequent complaints and resignations of Chairs and Parish Clerks. Following the receipt of this and the following two complaints (C22-12 and C22-13) a local resolution in the form of outside consultancy has been commissioned by Rother District Council to assist the Parish Council in resolving their local issues and moving forward in the interests of the community which they serve. It is hoped that a funding contribution to the consultancy will be agreed by the Parish Council.</p> <p>Outcome / Comment: The outside consultancy has commenced work and will look to conclude by the end of March 2023.</p>
C22-12	27/10/22	Parish Councillor (A)	Parish Councillor (Chair)	<p>Complaint: Allegations of disrespect, disrepute and attempting to use position improperly.</p> <p>Decision: As above for C22-11.</p> <p>Outcome / Comment: The outside consultancy has commenced work and will look to conclude by the end of March 2023.</p>
C22-13	27/10/22	Parish Councillor	Parish Councillor (A)	Complaint: Allegations of disrespect, bullying and disrepute.

REF	DATE RECEIVED	COMPLAINANT	SUBJECT MEMBER	NATURE OF COMPLAINT, DECISION AND COMMENT
		(Chair)		<p>Decision: As above for C22-11.</p> <p>Outcome / Comment: The outside consultancy has commenced work and will look to conclude by the end of March 2023.</p>

Rother District Council

Report to: Audit and Standards Committee

Date: 5 December 2022

Title: Code of Conduct

Report of: Lorna Ford, Monitoring Officer

Purpose of Report: To consider 1) a minor amendment to the Council's existing Code of Conduct to incorporate Social Media and 2) whether or not the Council looks to adopt the Local Government Association's Model Code of Conduct.

Officer

Recommendation(s): **Recommendation to COUNCIL:** That:

- 1) the Council's existing Code of Conduct be amended by the inclusion of a new paragraph 2 (4) as shown at paragraph 4 of the report; AND

RESOLVED: That:

- 2) the Audit and Standards Committee establish an informal working group, and appoint Members thereto, to consider the Local Government Association's model Code of Conduct with a view to recommending formal adoption in the new civic year.

Introduction and Background

1. At the June meeting, the Committee considered the Government's response to the Committee on Standards in Public Life's (CSPL) recommendations resulting from their review of local government ethical standards. At that time it was noted that, whilst the Government had agreed to look at a number of issues as a result of the recommendations, overall, it seemed that there would be no fundamental changes to the current decentralised approach and available sanctions for Members who had been found to have breached the Code of Conduct (CoC) for the foreseeable future.
2. As part of the Committee's consideration at that time, it was resolved that a working group be established to consider an amendment to the Council's existing CoC to incorporate the use of social media, as well as Member training in the use of social media and when the code may be engaged. A working group was not established at the meeting and an informal meeting of the Committee was held on 17 November to consider the options for formal discussion and ratification at this meeting.
3. The Council had previously responded to the Local Government Association's consultation on their model CoC in July 2020 (formulated as a result of the CSPL review) and considered in March 2021 whether to adopt the new Code, which had been launched in December 2020. At that time it was agreed that, in order to maintain consistency across the other East Sussex authorities, the Council's existing CoC be retained.

4. The Council's existing CoC dates back to the original nationally provided CoC that all local authorities were required to adopt, subsequently amended by provisions brought in by the Localism Act 2011, but broadly the same.
5. The Monitoring Officer and Deputy Monitoring Officer have provided training on the LGA's model CoC to the parish and town councils across the district (reported elsewhere on this agenda), and now is considered a good time to reconsider this Council's position with regard to its adoption.

Proposed Social Media Amendment

6. Whilst a complaint against a Councillor for inappropriate use of social media can currently be brought under the Council's existing CoC, it is not explicitly mentioned, as in the LGA's model CoC. It is therefore proposed that in the short term, a simple amendment is made by replicating the text from the LGA's CoC into the Council's existing CoC, under Part 2, Scope, as follows:

Scope

2. (4) The Code applies to all forms of communication and interaction, including:
 - at face-to-face meetings
 - at online or telephone meetings
 - in written communication
 - in verbal communication
 - in non-verbal communication
 - in electronic and social media communication, posts, statements and comments.

LGA Model Code of Conduct

7. The LGA's model CoC is modern, well written, and easy to understand, with worked examples and excellent guidance. A training pack provided by the LGA has proved a useful tool for the MO and DMO in delivering the training with the parish and town councils, which has been well received.
8. Whilst the proposed amendment to the Council's existing CoC is supported in the short term, it is recommended that the Committee consider again whether the Council should adopt the LGA's model CoC. To this end, it is recommended that the Committee establishes an informal working group to consider and review again the LGA's model CoC with a view to recommending formal adoption in the new civic year (May 2023).
9. Should Members agree to undertake this review, consideration will be given to the comments previously made by the Council to the LGA's consultation and any amendments / tweaks can be recommended to the model for approval and adoption by the Council.

Risk Management

10. Failure to regularly review the Council's Code of Conduct may result in a CoC that does not reflect new trends and expected levels of conduct.

Conclusion

11. The Committee is asked to consider the proposed interim amendment to the Council's existing CoC and to agree to review again, whether or not the Council adopts the LGA's model CoC.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	Consultation	No
Environmental	No	Access to Information	No
Risk Management	Yes	Exempt from publication	No

Deputy Chief Executive:	Lorna Ford, Deputy Chief Executive and Monitoring Officer
Report Contact Officer:	Lisa Cooper, Democratic Services Manager and Deputy Monitoring Officer
e-mail address:	lisa.cooper@rother.gov.uk
Appendices:	None.
Relevant Previous Minutes:	AS20/15 AS22/08
Background Papers:	LGA Model Code of Conduct
Reference Documents:	None.

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Rother District Council

Report to: Audit and Standards Committee

Date: 5 December 2022

Title: Review of the Arrangements for Dealing with Member Complaints, Investigations Procedure and Hearings Procedure

Report of: Lorna Ford, Monitoring Officer

Purpose of Report: To consider several minor amendments to the Council’s Arrangements for Dealing with Member Complaints.

Officer

Recommendation(s): **Recommendation to COUNCIL:** That:

- 1) Subject to the approval of 2) below, the amendments to Part 2, Article 9, – Ethical Standards function of the Audit and Standards Committee paragraph 9.1 (c) iii) be approved and adopted; AND

It be **RESOLVED:** That:

- 2) the proposed amendments to the Arrangements for Dealing with Member Complaints, Investigations and Hearing Procedures be approved.

Introduction

- 1. This report sets out several proposed amendments to the Council’s Arrangement for Dealing with Member Complaints, and consequential amendments to the Investigations and Hearings Procedures. The main proposed amendments are in order to clarify the role of the Independent Persons (IPs) in complaint handling in light of recent experience and advice obtained. The Council’s current IPs are Bob Brown and Rose Durban and they are non-voting Members of this Committee (when dealing with standards related matters).
- 2. This review has also provided an opportunity to make several other amendments to improve the documents, as shown. Should the proposed amendments be supported, there will also be a minor amendment required to Part 2 of the Constitution, as detailed in the report. The proposed amendments are shown in **RED** on the attached appendices and reflect the points discussed in the following paragraphs.
- 3. The Audit and Standards Committee is able to agree the amendments to the Arrangements for Dealing with Member Complaints and Investigations and Hearings Procedures under its delegated powers from full Council. However, the amendment to the Constitution, will require full Council approval.

Rational for Proposed Amendments

- 4. Following feedback from the IPs who attended an IP conference in June this year, it is considered that the role of the IPs requires further clarity within the Council’s procedural documents. Advice received from leading consultants in

the field of ethics and standards and knowledge gained at recent training events, has also shown that the Council's procedural documents require clarification in this regard. It needs to be clear that a discussion with an IP will only be offered to a Subject Member (SM) (the Councillor against whom a complaint has been made) if a complaint made against them has been referred for an investigation and not at the initial assessment stage. Indeed, the initial assessment stage could result in the complaint being dismissed, in which case there would be no need for a SM to speak to an IP.

5. It also needs to be made clear that IPs are not there to provide legal advice or to represent the SMs who can sometimes get the impression that the IPs "are on their side"; SMs need to obtain their own legal advice, as appropriate. It is further recommended that only one IP is used throughout each case, for example, the same IP used at assessment stage, and then if the matter is referred for investigation, the SM would be offered the opportunity to speak to the same IP, if requested. This will ensure that IPs are not "played off" against one another and provides a consistent approach for the management of each individual case. Should a complaint that has been investigated proceed to a Hearing Panel, again, the same IP would be invited to attend that Hearing Panel.
6. It is also considered good practice to offer the IP as a "broker" between the two parties to a complaint, if there is dissatisfaction on either side with a proposed local resolution option.

Consequential Amendments to the Constitution

7. Should the amendments proposed on the attached appendices be supported, Part 2, Article 9, – Ethical Standards function of the Audit and Standards Committee paragraph 9.1 (c) iii) will require amendment to reflect the same.

Risk Management

8. The Audit and Standards Committee has a duty under the Localism Act to put in place arrangements to investigate and make decisions on written allegations that a Member or Co-opted Member of the Council has failed to comply with the Code of Conduct. To regularly review and update these arrangements in light of experience and knowledge ensures a culture of continuous improvement.
9. Failure to make the role of the IP clear to all parties to a complaint and to offer a SM the opportunity to discuss their case, if and when a complaint is referred for an investigation, could result in criticism and legal challenge in terms of fairness of complaint handling.

Conclusion

10. The Committee is asked to consider the proposed amendments within the report and approve the recommendations as shown in the report.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	Consultation	No
Environmental	No	Access to Information	No
Risk Management	Yes	Exempt from publication	No

Deputy Chief Executive:	Lorna Ford, Deputy Chief Executive and Monitoring Officer
Report Contact Officer:	Lisa Cooper, Democratic Services Manager and Deputy Monitoring Officer
e-mail address:	lisa.cooper@rother.gov.uk
Appendices:	Appendix A – Arrangements for Dealing with Member Complaints Appendix 2 – Investigations Procedure Appendix 3 – Hearings Procedure
Relevant Previous Minutes:	None.
Background Papers:	None.
Reference Documents:	None.

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ARRANGEMENTS FOR DEALING WITH MEMBER COMPLAINTS

1. Context

These “Arrangements” set out how a Complainant may make a complaint that an elected or co-opted Member of Rother District Council or of a Parish or Town Council within the District has failed to comply with the ir authority’s Code of Conduct, and sets out how the Rother District Council (“the Council”) authority will deal with allegations of a failure to comply with the relevant authority’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, (“The Act”) the District Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the authority or of a Parish or Town Council within the District, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

The District Council has appointed two Independent Persons, the view of one of which must be sought by the Council authority before it makes a decision on an allegation which it has decided shall be investigated. Their views may be sought by the Council authority at any other stage, or by a Subject Member, ~~or a Member or co-opted Member of a Parish or Town Council within the District,~~ against whom an allegation has been made that they have breached the Code of Conduct, in cases when the complaint has been referred for an investigation only.

2. The Code of Conduct

The District Council has adopted a Code of Conduct for Members, which is attached as Appendix 1 [NOT INCLUDED HERE] to these arrangements and is available for inspection on the District Council’s website and on request from the Community Help Points at Bexhill, Battle and Rye.

Each Parish or Town Council within the District is also required to adopt a Code of Conduct and, if they have a website, to publish it there. If the Complainant wishes to inspect a Parish or Town Council’s Code of Conduct, the Complainant should inspect the website operated by the Parish/Town Council or request the Parish/Town Clerk to allow the Complainant to inspect the Parish or Town Council’s Code of Conduct document.

3. Making a complaint

If a Complainant wishes to make a complaint, they can either must complete the Members’ Code of Conduct Complaint Form which is available on request from the Council’s Community Help Points or can be found on our website at: <http://www.rother.gov.uk/article/369/Members-Code-of-Conduct>

and send to:

The Monitoring Officer
Rother District Council
Town Hall
Bexhill-on-Sea
East Sussex
TN39 3JX

or: standards@rother.gov.uk

Complainants can also email their complaint direct to the email address above or use the on-line complaint form at the following link:

<https://www.rother.gov.uk/accessing-council-services/members-code-of-conduct/>

The Monitoring Officer has a statutory responsibility for maintaining the Register of Members' Interests and is responsible for administering the system in respect of complaints of Member misconduct for both District and Parish and Town Councillors. Copies of Members' Register of Interests are available on the ~~District~~ Council's website and the Parish and Town Council websites where they have one.

In order to ensure that ~~the Council we~~ have all the relevant information ~~which we need to be able to process a their~~ complaint, ~~the~~ Complainants are advised to must complete and send ~~us~~ the Complaint Form, which can be downloaded from the District Council's website, next to the Code of Conduct, and is available on request from the Council's Community Help Points. Failure to provide all the relevant information may result in a delay in processing the complaint.

The Complainant must provide their name and a contact address or email address, so that ~~the Council we~~ can acknowledge receipt of their complaint and keep them informed of its progress. If the Complainant wishes to keep their name and address confidential, they must indicate this in the space provided on the complaint form, and if it is agreed, in which case the Council we will not disclose their name and address to the person against whom they are making the complaint (the "Subject Member"), without their prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of a complaint within five working days of receiving it, and will keep the Complainant informed of the progress of the complaint. The Monitoring Officer will also let the Subject Member know that a complaint has been received against them, by whom and the nature of the complaint.

4. **Will the complaint be investigated?**

The Monitoring Officer will review every complaint received and, after consultation with one of the Independent Persons, make a decision as to whether it merits formal investigation. This decision will normally be made within 10 working days of receipt of a complaint. The Monitoring Officer will decide a complaint does not merit investigation if:

- It is about someone who is no longer a Member of the relevant Council, or
- There has been a delay of more than six months since the matter complained of occurred (unless the Monitoring Officer is of the view that exceptional circumstances exist to allow an extension of time), or
- The complaint appears to be minor, politically motivated, vexatious and malicious or it is not otherwise appropriate to warrant further action.

This list is not intended to be exhaustive and the Monitoring Officer may decide that a complaint does not merit formal investigation for any other reason which appears to them to be appropriate.

The Monitoring Officer retains the discretion to refer the decision as to whether a complaint merits an investigation to the Audit and Standards Committee if it appears appropriate to do so.

When the Monitoring Officer or the Audit and Standards Committee has made a decision, the Monitoring Officer will inform the Complainant of the decision and the reasons for it.

Where the Monitoring Officer requires additional information in order to come to a decision, they may revert to the Complainant for such information. The Monitoring Officer may also request information from the Member against whom the complaint is directed. Where a complaint relates to a Parish or Town Councillor or co-opted member, the Monitoring Officer may also inform the Parish or Town Council of that complaint and seek the views of the Parish or Town Council Clerk before deciding whether the complaint merits formal investigation.

Where it appears appropriate to do, the Monitoring Officer may seek to resolve a complaint informally, without the need for a formal investigation. Such informal resolutions may involve the Subject Member admitting that their conduct was unacceptable and offering an apology, or other remedial action being taken by the authority to resolve the complaint. Subject Members are required to respond to the Monitoring Officer within five working days of receiving a suggested local resolution. Where the Subject Member or the authority makes a reasonable offer of local resolution, but the Complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If the complaint identifies criminal or regulatory misconduct by the Subject Member, or any other person, the Monitoring Officer may, without further reference to the Complainant, call in the Police or other regulatory agencies.

5. **How is the investigation conducted?**

The ~~District~~ Council has adopted a procedure for the investigation of complaints that the Code of Conduct has been breached, which is attached as Appendix 2 to these Arrangements.

If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another senior officer of

the authority, an officer of another authority or an external investigator. It is the responsibility of the Monitoring Officer to oversee the work of the Investigating Officer and to ensure that the investigation is carried out fairly and efficiently. The Investigating Officer will decide whether it is necessary to meet or speak to the Complainant in order to understand the nature of the complaint. They may do so in order that the Complainant can explain their understanding of events and make representations as to what documents the Investigating Officer may wish to see, and who the Investigating Officer may wish to interview.

The Investigating Officer will contact the Subject Member against whom a complaint has been made and provide them with a copy of the complaint. They will ask the Subject Member to provide their explanation of events and to identify the documents which are available to the Subject Member which the Investigating Officer may wish to see and who they may wish to interview. In exceptional cases, where it is appropriate to keep the Complainant's identity confidential or disclosure of details of the complaint to the Subject Member might prejudice the investigation, the Monitoring Officer may delete the Complainant's name and address from the papers given to the Subject Member, or delay notifying the Subject Member until the investigation has progressed to a point where it is appropriate to do so.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the Complainant and the Subject Member concerned, to give both an opportunity to identify and make representations on any matter in the draft report which they disagree with or which they believe requires more consideration.

Having received and considered any comments which the Complainant and Subject Member may make on the draft report, the Investigating Officer will send their final report to the Monitoring Officer.

6. **What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and, if they are satisfied that the Investigating Officer's report identifies and addresses all relevant issues relating to the complaint, the Monitoring Officer will write to the Complainant and the Subject Member concerned (and to the Parish or Town Council, where the complaint relates to a Parish or Town Councillor), notifying them that they are satisfied that no further action is required and give them both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly they may ask the Investigating Officer to reconsider their report or make other arrangements to review the investigation.

7. **What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and, after consulting the Independent Person, either seek local resolution or refer the matter to the District Council's Hearing Panel.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Independent Person and the Complainant and seek to agree fair resolution and which also ensures high standards of conduct for the future. Such resolution may include the Subject Member accepting that their conduct was in breach of the Code of Conduct and, for example, offering an apology, and/or agreeing to other remedial action – such as training, mentoring or mediation. If the Subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Standards Committee (and, where appropriate, to the Parish or Town Council for information), but will take no further action. However, if the Complainant tells the Monitoring Officer that they do not consider any suggested resolution would be adequate, the Monitoring Officer may decide to refer the matter for a local hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the Complainant is not satisfied by the result of the attempt at Local Resolution and the Monitoring Officer agrees with the Complainant's representations, or the Subject Member concerned is not prepared to undertake the proposed remedial action, then the Monitoring Officer will refer the Investigating Officer's report to the Hearings Panel – which will conduct a local hearing before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether and what action to take (if any) in respect of the non-compliance of the Subject Member.

The ~~District~~ Council has agreed a procedure for local hearings, which is attached as Appendix 3 to these arrangements.

In summary, the Monitoring Officer will conduct a “pre-hearing process”, requiring the Subject Member to give their response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. In conjunction with the Monitoring Officer the Chair~~man~~ of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.

Where a hearing is considered necessary, the Investigating Officer will present their report, call such witnesses as they may consider necessary and make representations to support their conclusion that the Subject Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the Complainant, and their witnesses, to attend and give evidence to the Hearings Panel. The Subject Member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearings Panel as to why they believe that they have not failed to comply with the Code of Conduct.

Having heard evidence the members of the Hearing Panel may consider their view in public or retire to do so privately. During such deliberations the voting members of the Hearing Panel will consult with and seek the view of the Independent Person (and, where the Subject Member is a

member of a Parish or Town council, with the Parish/Town Council representative on the Hearing Panel).

If the Hearing Panel concludes that the Subject Member did not fail to comply with the Code of Conduct, they will dismiss the complaint. Alternatively, if the Hearing Panel concludes that the Subject Member breached the Code of Conduct, the Chair~~man~~ will inform the Subject Member of this finding and the Hearing Panel will then consider what, if any, action, the Hearings Panel should take as a result of the Subject Member's failure to comply with the Code of Conduct. In doing so the Chair~~man~~ will give the Investigating Officer and Subject Member an opportunity to make representations to the Hearing Panel. When considering what, if any, further action will be taken, the voting members of the Hearing Panel will consult with and take the view of the Independent Person into account (and, where the Subject Member is a member of a Parish or Town Council, with the Parish/Town Council representative on the Hearing Panel).

8. Membership of the Hearing Panel

The Hearing Panel is a Sub-Committee of the Council's Audit and Standards Committee. It will generally consist of three District Councillors. The full Audit and Standards Committee also includes two Independent Persons. Under the terms of the Act, there is a mandatory requirement for the Monitoring Officer to consult one of the Independent Persons when considering whether a complaint will be investigated – as detailed at paragraph 4. Additionally, the Independent Person who sits on the Hearing Panel does not have a right to vote on decisions made at the Hearing, their views will be sought and taken into account both when the Hearing Panel makes a decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. The full Audit and Standards Committee also includes two Parish/Town Council representatives. Where the Hearing Panel is dealing with a complaint against a Parish or Town Councillor one of the Parish/Town Council members of the Audit and Standards Committee will also be present. Although the Parish/Town Council representative does not have a right to vote on decisions made by the Hearing Panel, their views will be sought in a similar way to those of the Independent Person.

9. Who are the Independent Persons?

The Act requires the Council to appoint at least one Independent Person to assist the Monitoring Officer, as a consultee, during the pre-investigation, investigation, pre-hearing and hearing process. The same Independent Person will be used throughout each case to ensure consistency and knowledge of the complaint at each stage of the process, as necessary. – The role of the Independent Person is to represent the public interest and not to provide advice to or represent the Subject Member. The Independent Persons may also assist the Council by acting as a broker between parties in cases where there is dissatisfaction on one or both sides to a complaint, where an attempt has been made to resolve a complaint by a local resolution.

The District Council has appointed two such Independent Persons in order that the business of the Audit and Standards Committee can be dealt with efficiently

and to reduce the likelihood of a conflict of interest causing delay. Such Independent Persons applied for the post following public advertisement of the vacancy, and have been appointed by a positive vote from a majority of all the Members of the ~~District~~-Council. The current term of office of an Independent Person is four years.

The definition in the Act of an Independent Person is anyone who is not currently:

- (i) a Member, co-opted Member or officer of the authority,
- (ii) a Member, co-opted Member or officer of a Parish or Town Council of which the authority is the principal authority, or
- (iii) a relative, or close friend, of a person within sub-paragraph (i) or (ii) above.

10. What action can the Hearing Panel take where it has found that the Subject Member has failed to comply with the Code of Conduct?

The ~~District~~-Council has delegated to the Hearing Panel its powers to take action in respect of complaints against individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearing Panel may:

- 10.1 Publish its findings in respect of the Subject Member's conduct.
- 10.2 Write a formal letter to the Subject Member found to have breached the Code.
- 10.3 Report its findings to the ~~District~~-Council or to the Parish or Town Council for information.
- 10.4 Seek formal censure by motion.
- 10.5 Recommend to the Subject Member's Group Leader (or in the case of Subject Members who do not belong to a political group recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council.
- 10.6 In the case of a District Councillor ~~R~~recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.
- 10.7 Instruct the Monitoring Officer to, or recommend that the Parish or Town Council arrange mentoring, training, mediation or other appropriate remedy, for the Subject Member.

The Hearing Panel has no power to suspend or disqualify the Subject Member from office or to withdraw their Basic or any Special Responsibility Allowances.

11. What happens at the end of the Hearing?

Having heard all the evidence, the Chair~~man~~ will state the decision of the Hearing Panel as to whether the Subject Member has been found to have failed to comply with the Code of Conduct. If such a finding has been made, and

having heard representations from the Investigating Officer and the Subject Member, the Chair~~man~~ will state the actions which the Hearing Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal Decision Notice, to be signed by the Chair~~man~~ of the Hearing Panel. The Monitoring Officer will send a copy to the Complainant, Subject Member and, where applicable, to the Parish or Town Council. The Monitoring Officer will also make the Decision Notice available for public inspection and report the decision to the next meeting of the ~~District~~ Council's Audit and Standards Committee.

12. Appeals

There is no right of appeal for the Complainant or for the Subject Member against a decision of the Monitoring Officer or of the Hearings Panel.

If complainants ~~you~~ feel that the ~~C~~council has failed to deal with any aspect of the complaint properly, ~~they~~you may make a complaint to the Local Government and Social Care Ombudsman.

Reviewed/Approved: December ~~2022~~2015

INVESTIGATIONS PROCEDURE

Introduction

1. This document sets out the procedure which will be followed once a decision has been taken that an allegation of misconduct by a Member (the “Subject Member”) should be investigated.

Appointment of the Investigating Officer

2. Upon deciding to refer an allegation for investigation, the Monitoring Officer will appoint an Investigating Officer and instruct them to conduct an investigation into the allegation and report on it. The Monitoring Officer may appoint a replacement if the Investigating Officer is unable to complete the investigation. The Investigating Officer may be an Officer of the **District** Council or another authority or an external Investigating Officer. Although the Monitoring Officer is responsible for overseeing and ensuring the fairness and effectiveness of the Investigating Officers work, the Investigating Officer is responsible for the day to day management of the investigation. The Investigating Officer will remain independent of the Monitoring Officer and the Audit and Standards Committee throughout the investigation.

The Role of the Investigating Officer

3. The role of the Investigating Officer is to ensure, as far as reasonably possible, that all the information which is relevant to the allegation is identified, reviewed and presented in their report.
4. Subject to the agreement of the Monitoring Officer, the Investigating Officer may appoint a person(s) to assist them in the conduct of their functions and may obtain such professional advice as may be necessary for the proper conduct of the investigation.

Notification Requirements

5. Following the appointment of an Investigating Officer, the Monitoring Officer will notify the Complainant and Subject Member that the matter has been referred for investigation and inform them who is conducting the investigation. The Monitoring Officer will also advise the Complainant and Subject Member that they, and their witnesses, may be contacted by the Investigating Officer in relation to the investigation process.

Conduct of the Investigation

6. The Investigating Officer has a broad discretion as to how they conduct the investigation.
7. The Investigating Officer may request that the Subject Member and the Complainant provide them with information and/or documents which are relevant to the investigation. They may request them to provide details of

Appendix 2

witnesses or other persons who may be able to assist with the investigation. If such requests are not complied with the Investigating Officer may seek further instructions from the Monitoring Officer. If the Subject Member fails to co-operate and the matter is subsequently referred to a Hearing Panel, the Hearing Panel may take that lack of co-operation into account when considering the matters before them.

8. It may assist the Investigating Officer to set out a plan for how they are going to conduct the investigation. The Investigating Officer may consult the Monitoring Officer at any stage of the investigation on any matter that the Investigating Officer considers to be relevant to the proper conduct of the investigation.
9. The Investigating Officer may request any party connected to the investigation to attend for interview with them, or arrangements to obtain information – including by telephone conference, [remote meeting platforms](#) and/or for any party to provide them with documents or other material relevant to the investigation.
10. Any person who is interviewed by the Investigating Officer may arrange to have a friend or qualified legal representative attend with them – provided they are not connected to the matter under investigation.
11. The Investigating Officer will take a note of any interviews that they conduct.
12. The Monitoring Officer may, at their discretion, agree that the [Council authority](#) may pay such reasonable expenses, fees or allowances to any persons connected to the investigation who provides documents, information, advice or explanation, or who travels to see the Investigating Officer, as they consider appropriate.

Referral to the Monitoring Officer

13. The Investigating Officer may refer the matter under investigation back to the Monitoring Officer for review if it appears to them appropriate to do so. For example, if the Complainant, Subject Member or a witness is seriously ill or it is appropriate to re-consider the investigation in the light of new evidence.

Deferral of Investigation

14. The Monitoring Officer has discretion to defer the investigation if it appears appropriate to do so. For example, if there is a criminal investigation taking place, or one of the parties involved is so unwell that the progress of the investigation is likely to be significantly delayed.

Confidentiality

15. The Investigating Officer will request that any party involved in the investigation treat the matter as confidential, in order to maintain the integrity of the process. Should the matter be referred to a Hearing Panel the failure of any party to do so will be brought to the attention of the Hearing Panel.

Draft Report

16. When the Investigating Officer is satisfied that they have sufficient information, or has obtained as much information as is reasonably practicable to obtain, they shall prepare a confidential draft report setting out the details of the allegation, the relevant sections of the Code of Conduct, a summary of the allegation, the response of the Subject Member, the information, documents and evidence taken from all parties during the course of the investigation, a statement of their draft findings, and the Investigating Officer's conclusion as to whether the Subject Member has breached the Code of Conduct.
17. The draft report will be sent to the Monitoring Officer, the Complainant and the Subject Member for their comments. Following liaison with the Monitoring Officer the Investigating Officer may wish to conduct further investigations once they have received those comments, before producing their final report.

Final Report

18. The final report will include the same sections as the draft report and will conclusively confirm the Investigating Officer's view as to whether or not there has been a breach of the Code of Conduct.
19. Where appropriate, to assist the Monitoring Officer, the Investigating Officer may include a chronology, summary of disputed facts and/or to append witness statements or other documents to the final report.

Action on Receipt of Final Report

20. If the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct, the Monitoring Officer will review the report, consult with the Independent Person, and, if satisfied that the report addresses all relevant issues, will write to the Complainant and the Subject Member notifying them that no further action is to be taken and enclose a copy of the final report.
21. If the Monitoring Officer is not satisfied that the investigation addresses all relevant issues, or fails to deal with the matter comprehensively or has not been conducted properly, they will, following consultation with the Independent Person, ask the Investigating Officer to reconsider their report, or the Monitoring Officer may make other arrangements to review the investigation.
22. If the report concludes that there is evidence of a failure to comply with the Code of Conduct the Monitoring Officer will, after consulting the Independent Person, either seek local resolution or refer the matter to the ~~District~~ Council's Hearing Panel.
23. More information on the local resolution of complaints can be found in the separate document referring to the "Arrangements for dealing with Member Complaints".
24. More information on the Hearing Panel process can be found in the separate document referring to the "Hearing Procedure".



HEARINGS PROCEDURE

1. Where an Investigating Officer has concluded that there is evidence that the Subject Member has failed to comply with the Code of Conduct, and following consultation with one of the Independent Persons, the Monitoring Officer may decide that the matter should be dealt with before a Hearing Panel. The procedures for doing so are as follows:

Pre-Hearing Process

2. The Monitoring Officer will, arrange for a Sub-Committee of the Audit and Standards Committee – known as the Hearing Panel to meet to hear the complaint, in accordance with the agreed Arrangements for Dealing with Member Complaints. The Hearing Panel will deal with the matter as soon as is reasonably convenient for all parties and, subject to exceptional circumstances arising, will aim to do so within three months of receiving the Investigating Officer's report. After the Monitoring Officer has consulted with the Independent Person and taken the view that a Hearing Panel should be convened the Monitoring Officer will contact all parties and seek to establish a convenient date for the hearing. All parties will be expected to respond promptly (and in no more than 14 days) to the Monitoring Officers' request – in order that the date the Hearing Panel sits can be arranged promptly and at the convenience of all parties.
3. As soon as a suitable date has been identified all parties will be notified of it. Where a Hearing Panel may sit for more than one day, the Monitoring Officer will aim to arrange sittings on consecutive days. If a party becomes unavailable to attend the Hearing Panel after the date of the hearing has been fixed, the Monitoring Officer will expect to receive prompt notification and brief reasons for the unavailability. Based on that information the Monitoring Officer will exercise their discretion as to whether the date the Hearing Panel sits should be re-arranged.
4. The Audit and Standards Committee are subject to the normal requirements on confidential and exempt information as apply to any other Committee under ss100 A to K and Schedule 12A of the Local Government Act 1972. The Monitoring Officer will consider whether these provisions apply in advance of the hearing and may consult one of the Independent Persons, the Chairman of the Hearing Panel and any other party involved in the Hearing Panel for their views.
5. The Monitoring Officer will request that the Subject Member gives their response to the Investigating Officer's report promptly – in order to identify areas of agreement between the parties and matters that are likely to be contentious well in advance of the date that the Hearing Panel sits. If the Subject Member unreasonably delays or withholds their response the Hearing

Panel may take that lack of co-operation into account when considering the matters before them.

6. If the Subject Member wishes to rely on new evidence at the hearing that has not been considered by the Investigating Officer, for example, documents or information that have not previously been referred to or by calling new witnesses, the Subject Member will be expected to give the Monitoring Officer reasonable notice and provide the Monitoring Officer with a copy of that new material or a summary of the evidence that the new witness is likely to give.
7. Subject to the above, on the exercise of the Chairman's discretion the Hearing Panel may decline to allow such new arguments, witnesses or evidence to be presented at the hearing.
8. It is the responsibility of the Monitoring Officer to oversee the work of the Investigating Officer during the evidence gathering process and the Monitoring Officer will collate and consider all the evidence available prior to placing it before the Hearing Panel. During this process the Monitoring Officer will, where they consider it necessary to do so, consult with, and take account of, the view of the Independent Person.
9. The Chairman of the Hearing Panel is responsible for the conduct of the hearing. Where the Monitoring Officer considers it appropriate to do so, the Monitoring Officer may consult with the Chairman of the Hearing Panel (and, if appropriate, with one of the Independent Persons), with a view to assisting the Chairman in issuing pre-hearing directions to the parties involved in the hearing. The purpose of doing so is to identify relevant issues and to ensure that the business of the Hearing Panel is dealt with efficiently. The decision as to whether directions are issued is, ultimately, a matter for the Chairman.
10. The Monitoring Officer may, at their discretion, agree that the authority pay the reasonable expenses of the Complainant, Subject Member and witnesses, associated with their attendance at the hearing.
11. The Monitoring Officer will consider whether it is appropriate to hear two or more complaints together. This may occur, for example, if they relate to the same Subject Member, or arise from the same or a similar set of facts or from the same incident, or have some other connection by which the Monitoring Officer considers that it is proper to link one or more complaints.
12. The Monitoring Officer will provide the Complainant, Subject Member and all members of the Hearing Panel with a copy of the Investigating Officer's final report at least two weeks after the decision has been made to refer the matter to the Hearing Panel.
13. In order to assist the Hearing Panel, following the decision to refer the matter for a hearing, the Monitoring Officer will also provide all members of the Hearing Panel with a briefing note which summarises the allegation, details the agreed and disputed facts and identifies the evidence which the Complainant, Subject Member and their witnesses are expected to give. The briefing note will be prepared as soon as reasonably practicable following the decision to refer the matter to the Hearing Panel and may also contain, for example, a chronology and copies of documents the Monitoring Officer considers may be relevant.

14. In addition to assisting in preparing the members of the Hearing Panel for the hearing, the purpose of the briefing note prepared by the Monitoring Officer is to enable members of the Hearing Panel in identifying any conflict of interest or potential conflict of interest that may arise. Members of the Hearing Panel will familiarise themselves with the relevant issues and, where necessary, notify the Monitoring Officer of any conflict of interest or potential conflict of interest, as a matter of priority.
15. The Monitoring Officer will act as a point of contact for the Subject Member, the Complainant, and any witnesses who will give evidence.

The Hearing

16. There is a presumption that the deliberations of the Hearing Panel will take place in public. The parties to the hearing may make representations to the Chair~~man~~ on this point and should do so, via the Monitoring Officer, in good time prior to the hearing. The Chair~~man~~ may issue directions in advance on this point or, in the interests of transparency, deal with the issue at the commencement of the Hearing Panel.
17. ~~The One of the Independent Persons who has been involved with the earlier stages of the complaint appointed by the District Council~~ will be invited to attend at the Hearing Panel. ~~Where one of the Independent Persons has already been involved in the pre-hearing process and there is an actual, or potential, conflict of interest, the Monitoring Officer will invite the other Independent Person to attend the Hearing Panel who has not been involved with the pre-hearing process.~~ Where an Independent Person takes part in the Hearing Panel they will be consulted and their view sought during the process and, save that they are not entitled to vote on the decision as to whether there has been a breach of the Code of Conduct and, if so, what action to take, they will be treated as an equal member of the Hearing Panel.
18. If the Subject Member does not attend the hearing, the Hearing Panel may at the discretion of the Chair~~man~~, adjourn the hearing or continue to hear evidence and reach a decision on the basis of the Investigating Officer's report and any evidence they may hear.
19. The Hearing Panel sits as a Sub-Committee of the Audit and Standards Committee. As such it is a meeting of the ~~District~~ Council, not a court of law. Where a Hearing Panel sits the burden is on the Complainant, through the Investigating Officer, to prove that there has been a breach of the Code of Conduct. That burden is to the civil standard, the allegation must be proved on the balance of probabilities. Evidence is not heard on oath. However, all parties are expected to have proper regard for the seriousness of the proceedings and the public interest in ensuring the business of the Hearing Panel is conducted fairly and efficiently.
20. In order to assist the Hearing Panel in dealing with matters fairly and efficiently the Chair~~man~~ of the Hearing Panel may, at their discretion, allow the Investigating Officer and the Subject Member to make opening remarks and/or closing arguments.

Representation

21. The Subject Member may arrange to have a friend or qualified legal representative attend the hearing with them, provided that they are not connected to the matter under investigation. The Hearing Panel may refuse to allow the friend or representative to remain at the hearing if they are disruptive.

Evidence

22. All matters relating to the evidence and procedure at the hearing are within the discretion of the Chair~~man~~ of the Hearing Panel. The Chair~~man~~ may, at any time, seek advice from the Monitoring Officer.
23. Subject to the exercise of the Chair~~man~~'s discretion to manage the hearing, the Subject Member is entitled to present their case as they see fit.
24. Where the Chair~~man~~ of the Hearing Panel may consider exercising their discretion as to the management of the proceedings the Chair~~man~~ will have regard to any relevant submissions made by the Investigating Officer and Subject Member.
25. It will be the general expectation of the Hearing Panel that all witnesses of fact relevant to the disputed issues will attend in person to give their evidence and to be questioned. Less weight may be placed on the evidence of witnesses of fact where they do not attend before the Hearing Panel, because they are not available to be questioned by the other party. It is the expectation that witnesses as to character will normally provide their evidence in writing, such evidence will be read to the Hearing Panel by the party who wishes to rely on that evidence.
26. In addition to the information detailed at paragraph 19 above, it will be the expectation of the Hearing Panel that the Complainant, Subject Member and all witnesses behave courteously both throughout the pre-hearing stage and at the hearing. Parties who behave unreasonably, are rude or who seek to disrupt the hearing will be asked to leave and the Chair~~man~~ may exercise their discretion to proceed without hearing that ~~person's~~person's evidence. Alternatively, the hearing may be adjourned.
27. Subject to the Chair~~man~~ exercising their discretion, the general procedure at a hearing will be that the Investigating Officer will present their final report, call such witnesses as they consider necessary and make representations to support their conclusions. Following the Investigating Officer calling each witness the Subject Member will be entitled to question that witness. Thereafter the Subject Member will have the opportunity to give their evidence, call witnesses and to make representations to the Hearing Panel as to why they believe they have not failed to comply with the Code of Conduct. The Investigating Officer may question the Subject Member and each of the Subject Member's witnesses, after they have given their evidence. The Complainant, Investigating Officer, Subject Member and all witnesses may be questioned by all members of the Hearing Panel during the proceedings. If it appears to the Monitoring Officer that a relevant question or issue has not been raised by either party the Monitoring Officer may bring that point to the attention of the Chair~~man~~.

28. The onus is on the Subject Member to ensure the attendance of all witnesses they wish to call to give evidence on their behalf at the Hearing Panel. The Chair~~man~~ of the Hearing Panel will consider the relevance of the potential evidence that a witness may give, both in liaison with the Monitoring Officer at the pre-hearing stage (when the Chair~~man~~ may issue directions) and throughout the hearing. By applying the test of relevance, the Chair~~man~~ may limit the number of witnesses to be called by either party and/or the issues that may be covered by them.
29. No party to the proceedings has the power to compel any witness to attend to give evidence before the Hearing Panel.

Role of Monitoring Officer at the Hearing

30. The role of the Monitoring Officer is to ensure that the pre-hearing stage and hearing are conducted efficiently. Although they are responsible for overseeing the work of the Investigating Officer, the Monitoring Officer will remain impartial and, where asked to do so by the Chair~~man~~ of the Hearing Panel, may give independent advice on legal and procedural matters. The Monitoring Officer is not permitted to make findings of fact regarding any allegation that the Code of Conduct has been breached, this is a matter solely for the Hearing Panel. References to the Monitoring Officer should be read to include any representative of the Monitoring Officer.

Role of the Complainant at the Hearing

31. The role of the complainant will usually be limited to being a witness and they are not a party to the proceedings. However, the Hearing Panel may wish to consult them at any stage in the hearing if they feel their comments would assist them.

Decision

32. Having heard all the evidence, the Hearing Panel must decide whether or not the Subject Member has breached the Code of Conduct and, if so, what, if any, sanctions to impose.
33. The Hearing Panel will generally retire to consider in private whether they conclude that the Subject Member has breached the Code of Conduct. All members of the Hearing Panel may contribute equally to the deliberations, although only the District Council~~lor~~ members of the Hearing Panel may vote. If necessary, the Chair~~man~~ has a casting vote.
34. Having considered whether or not the Subject Member has breached the Code of Conduct, the Hearing Panel will reconvene in public session and the Chair~~man~~ will advise the Subject Member of the outcome. If the Hearing Panel decides that the Subject Member has not breached the Code of Conduct then the proceedings are concluded immediately. Alternatively, if the Hearing Panel decides that the Code of Conduct has been breached, the Chair~~man~~ will announce this decision and give brief verbal reasons. The Investigating Officer and Subject Member may then make representations as to what, if any, sanctions are appropriate. The Hearing Panel will generally retire to consider those representations. On returning to public session the Chair~~man~~ will announce the sanctions, if any, to be imposed and give brief verbal reasons.

35. While the Monitoring Officer may assist the Hearing Panel during its private deliberations by, for example, reviewing the evidence heard or advising on issues of law, the Monitoring Officer is not permitted to express any view on the merits of the evidence or to attempt to influence the decision making process. Once a decision has been made, either whether or not the Code has been breached or on the imposition of sanctions, the Monitoring Officer may assist the Chair~~man~~ in drafting a short document containing the reasons for the relevant decision, to be announced by the Chair~~man~~ at the hearing.

Sanctions

36. The Hearing Panel must consult the Independent Person before imposing any sanction and give the Subject Member the opportunity to make representations.
37. When making its decision on the sanctions that may be imposed the Hearing Panel will consider the seriousness of the breach of the Code of Conduct and its actual and potential consequences. In doing so it will also have regard to any mitigating or aggravating factors, such as:

Mitigating Factors

- An honest but mistaken belief that the action was not a breach of the Code of Conduct.
- A previous record of good public service.
- An offer to apologise for the breach, particularly if it is made at an early stage in the overall proceedings.
- Evidence of ill health at the time of the breach.

Aggravating Factors

- Dishonesty.
 - Continuing to deny the breach.
 - An attempt to blame others.
 - Evidence of a failure to follow earlier advice or warnings.
 - Previous breaches – particularly where they are of a similar nature.
38. When imposing sanctions the primary objective of the Hearing Panel will be to ensure that the Subject Member is dealt with in a way that prevents a further breach of the Code of Conduct and maintains public confidence in the General Principles of Public Life and ethical local governance.
39. The sanctions available to the Hearing Panel are to:
- Publish its findings in respect of the Subject Member's conduct.
 - Write a formal letter to the Subject Member.
 - Report its findings to Council for information.
 - Seek formal censure by motion.
 - Recommend to the Subject Member's Group Leader (or, in the case of Subject Members who do not belong to a political group, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council.

- In the case of a District Councillor Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.
- Instruct the Monitoring Officer to arrange mentoring, training, mediation or other appropriate remedy for the Subject Member.

Notice of Decision

40. As soon as is reasonably practicable after the hearing the Monitoring Officer will prepare a formal Decision Notice. The Decision Notice will confirm the decision of the Hearing Panel. Where the Code of Conduct has been found to have been breached, and if sanctions have been imposed, the Decision Notice will contain written reasons. A copy of the Decision Notice will be sent to the Complainant and the Subject Member. The Decision Notice will be made available for public inspection and a report of the decision will be made to the next Audit and Standards Committee meeting.

Rother District Council

Report to: Audit and Standards Committee

Date: 5 December 2022

Title: Proposed Amendments to the Constitution

Report of: Malcolm Johnston, Chief Executive

Ward(s): -

Purpose of Report: To present several proposed amendments to the Constitution for approval and adoption.

Officer

Recommendation(s): **Recommendation to COUNCIL:** That:

- 1) the proposed amendments to Part 3, Responsibility for Functions at paragraphs 5.3 (c) and 9.3 (a) as detailed at paragraphs 5 to 9 of the report be approved;
- 2) the proposed amendment to Council Procedure Rule 16, as detailed at paragraphs 10 and 11 of the report be approved; and
- 3) the proposed amendment to public speaking rights at Planning Committee be approved as set out in the report.

Introduction

1. As Members are aware, the responsibility for considering and recommending changes to the Constitution now sits with the Audit and Standards Committee (A&SC), as set out in Article 15 of the Constitution.
2. At the A&SC's meeting in July, consideration was given to the proposed amendments to Part 3, Responsibility for Functions which had been the last part of the Constitution to be looked at by the Constitution Review Steering Group. The A&SC recommended the proposed amendments as printed to full Council in September, which were approved and adopted without amendment.
3. Around the same time, several potential amendments were picked up in respect of the regulatory committees' functions and procedures. These amendments were not proposed at the full Council meeting in September but instead are brought forward in this report to enable detailed consideration and onward recommendation to Council.
4. The report also details proposed amendments to Council Procedure Rule 16 in respect of previous decisions and motions and the public speaking scheme at Planning Committee meetings.

Proposed Amendments

Referral to full Council

5. The first proposed amendment relates to the provision within both the Licensing and General Purposes and Planning Committee Functions and Delegations whereby any three Members of the respective Committee may refer an item of business to full Council for determination – in other words, to relinquish the decision-making powers granted to them by full Council to determine a regulatory matter, prior to a decision being taken.
6. In both cases this provision is only applicable to decisions that have yet been made – i.e. to refer the decision-making to full Council to determine the matter. In the case of Planning Committee referring the determination of a planning application, a recommendation either for or against the proposal must be made with the required reasons / conditions etc. at the time of the reference; this has happened in the past on very few occasions in relation to controversial planning applications.
7. There has been no known reference from the Licensing and General Purposes Committee to full Council since it has come into being in its current form in October 2003.
8. The wording currently in the Constitution is as follows:

Licensing and General Purposes Committee

Paragraph 5.3 (c) - Three Members of the Committee may, at a meeting of the Committee when a resolution is under consideration and before it is passed, veto any item being dealt with in such manner and require submission to the Council for confirmation.

Planning Committee

Paragraph 9.3 (a) - in relation to the determination of all applications for planning permission (including applications for development made by the Council) a reference to full Council may be made by any three Members of the Committee indicating that it is their wish that an application be referred to full Council.

A reference to full Council must include, at the time of reference, a proposed motion of either refusal or approval with, in the case of refusal, the reasons for refusal and in the case of approval, any condition to be attached thereto; the item printed in the Council agenda will contain the Committee recommendation with the counter motion which may be moved.

9. It is proposed that the above paragraphs are deleted from the Constitution at Part 3, Responsibility for Functions so removing the ability for Members of these regulatory committees to refer a matter to full Council for decision. These are historical provisions and given that any decision can be rescinded, as detailed in the following paragraphs, it is not considered necessary to retain this provision within the Constitution. Following a review of neighbouring authorities, it is confirmed that this provision does not exist in any other East Sussex authority.

Previous Decisions and Motions (Council Procedure Rule 16)

10. Members will also be aware that there is the ability within the Constitution to rescind a decision once made (Council Procedure Rule 16). Having had experience of this in recent times, and in light of legal advice received at that time, it is recommended that in order to prevent this procedure rule from being used by Members in an attempt to “derail” unpopular decisions, Council Procedure Rule 16 be amended as follows (amendments shown in **RED**):

16.1 Motion to Rescind a Previous Decision

A motion or amendment to rescind or reverse, or which has the effect of rescinding or reversing a decision of the Council made within the preceding six months cannot be moved **unless there has been a material change in circumstances and** the notice of motion is signed by at least one third of **all** Members or unless it is a recommendation of a Committee or the Cabinet which appears on the agenda.

Planning Committee - Public Speaking Rights at Planning Committee

11. This minor amendment relates to a new provision that was included at 9.6, Public Speaking Rights at Planning Committee, within Part 3, Responsibility for Functions. The provision was introduced so that planning applications that had already been subject to public speaking and then deferred, may not necessarily be subject to public speaking a second time around, unless any new material planning information has been presented.
12. The proposed minor amendment is as follows:

9.6

- (3) Planning Applications that have already been subject to the public speaking scheme and deferred and reconsidered by the Planning Committee will not usually be subject to public speaking at the subsequent meeting unless any new material planning information has been presented. Each case will be decided on its merits **by agreement between the** Development Manager ~~in consultation with~~ and the Chair of Planning Committee.

Environmental Implications

13. Rother District Council’s Environment Strategy sets out the Council’s vision for reducing our impact on the environment and our commitment to make Rother District carbon neutral by 2030.
14. By regularly reviewing the way the Council operates will ensure that the Council continues to change and adapt to help reduce its carbon footprint and the Constitution will continue to evolve to meet the challenge.

Risk Management

15. The Council is required to have an up-to-date Constitution available at all times. The risk of having a Constitution that is difficult to understand may lead to Members and officers not acting in accordance with the Constitution which could result in potential challenge, maladministration and reputational damage.

It is important to keep the provisions within the Constitution under review and make appropriate recommendations for change in light of experience.

Conclusions

16. Members are asked to consider the proposed recommendations within this report and make recommendations to Council as it sees fit.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	Consultation	No
Environmental	Yes	Access to Information	No
Risk Management	Yes	Exempt from publication	No

Chief Executive:	Malcolm Johnston
Report Contact Officer:	Lisa Cooper, Democratic Services Manager
e-mail address:	lisa.cooper@rother.gov.uk
Appendices:	None.
Relevant previous Minutes:	

Rother District Council

Report to: Audit and Standards Committee

Date: 5 December 2022

Title: Rother DC Housing Company Governance Monitoring

Report of: Malcolm Johnston, Chief Executive / Joe Powell, Chief Operating Officer (Rother DC Housing Company Ltd)

Purpose of Report: To provide a progress update on the governance arrangements of Rother DC Housing Company and the arrangements for the local authority's governance of its wholly owned company.

Officer

Recommendation(s): It be **RESOLVED:** That the proposal to refine the governance arrangements of Rother DC Housing Company Ltd and the arrangements of the local authority's governance of its wholly owned company be noted.

Introduction

1. The purpose of the Rother DC Housing Company (RDCHC) governance arrangements is to ensure that RDCHC has enough freedom to achieve its objectives; while the Shareholder (the Council) has enough control to ensure that its investment is protected, returns on investment can be secured, and that RDCHC activity is in keeping with the strategic objectives of the Council. The strategic objectives of RDCHC can be found within its published Business Plan 2022-25 (Minute CB21/86 refers).
2. It is relevant to note that the Shareholder's Agreement affords the Shareholder with the power to make appointments to the RDCHC Board. The budget for the resourcing of the company operations is approved within the Business Plan 2022-23; in addition, operating costs relating to specific projects (such as Blackfriars) are built into individual project budgets and independently managed by the RDCHC Board; although budget performance is presented to the Shareholder Representative to demonstrate consistency with its objectives. It is important to note, that the Shareholder Representative and the Chair of the RDCHC Board continue to meet to discuss governance arrangements regularly. In addition, the operational structures and resourcing required for the RDCHC to meet its objectives are reviewed and discussed between both parties and the recommendations of this report are a result of these discussions.
3. The Audit and Standards Committee (A&SC) consider the governance arrangements for the management and monitoring of the Council's significant partnerships, hence it is the appropriate body to receive updates on the governance of RDCHC. The Overview and Scrutiny Committee (OSC) is the responsible body for scrutinising Council performance and that of its wholly owned entities. Once resources allow, the company intends to provide one

standalone report to both the OSC and A&SCs. This will enable each committee to review their focus area of responsibility, whilst having sight of the wider aspects.

4. This report follows a more recent report to A&SC, on 27 July 2022 (Minute AS22/20 refers) that provided an update on the governance arrangements of RDCHC as well as the Council's arrangements for the governance of RDCHC. In the period since the July report, RDCHC has commissioned a review of its governance, resourcing and operating structures from Counties and Capital Consulting (C&CC).
5. On the 20 October 2022 the RDCHC received its report and recommendations from C&CC. The scope of the C&CC review focused primarily on measures the company could take to improve its governance arrangements and ensure it continues to achieve its objectives effectively. The report also indicated the type of governance arrangements it should expect from its Shareholder, such that RDCHC can continue to demonstrate openness and transparency to the Council as sole Shareholder. A summary of the C&CC report recommendations can be found at Appendix A.
6. This report is in two sections therefore. Section 1 will provide a summary of the recommendations that the Shareholder Representative has received from the RDCHC Board, covering both the company's governance of itself, as well as recommendations from the RDCHC Board on the Shareholder's governance of its company. In section 2 of this report, the Shareholder Representative has considered these recommendations when presenting his view of how the company should continue to be governed, resourced and structured alongside priority next steps. All views within the report have been informed by a recent report, 'Local Authority Company Review Guidance (Local Partnerships LLP 2021)', a link to which can be found within the reference documents section of this report. Further, both entities have each consulted its own independent legal support and advice on an ad-hoc basis to inform their respective views.

Section 1: RDCHC Recommendations and Updates

7. The RDCHC Board has recommended to the Shareholder Representative its view on how it should be governed so that it is independent of the Shareholder in its decision making and is not subject to any formal or informal control that would be inappropriate, within the governance parameters of the Shareholder's Agreement.
8. A summary of the recommendations from the Chair of RDCHC to the Shareholder Representative can be found at Appendix B.
9. In July 2022, the company presented to the Shareholder Representative's Audit and Standards Committee key issues and risk associated with its governance that must be tackled to fulfil the ambitions of RDCHC's board. What follows is an update on the Board's progress towards mitigating these risks and issues as well as a summary of the measures which it will take to improve these mitigations further, following the C&CC report.
 - a. Skills and resource:

- The Board continues to recognise the need to improve the skills and expertise within the company, both at Board and officer level. In August 2022, the Board took the decision to expand the scope of its commissioned partner C&CC to include greater support to its officers from C&CC on the Blackfriars project. The operational structure of the Blackfriars project has therefore been revised, from within the existing project budget. Aside from the benefits of greater expertise, the approach will create capacity for the existing Chief Operating Officer (COO) and Housing Development Manager (HDM) to revise and add value to the existing Business Plan 2022-24, ahead of its presentation to the Shareholder for approval in early 2023.
- The Board has a strong desire for a dedicated full-time COO with the requisite professional experience, skills and expertise for driving the company forward; however, the Board acknowledges it must first demonstrate the benefits of such a role against the cost of it, within future business plans.
- The Board is anxious to expedite the recruitment of independent non-executives with a range of knowledge and expertise from the financial management and residential property development sectors. The Board is presently developing a recruitment package to this end.
- Consideration should be given to a senior RDC officer on the Board of RDCHC, in line with the practice in some other local authority housing companies.

b. Company business plan:

- The function of the business plan, and RDCHC's performance against it, should provide the Council with comfort that its financial, social and environmental objectives can be met. The performance of RDCHC is reviewed periodically, between relevant officers of RDCHC and the Shareholder. The Company is embarking upon a review of its business plan for shareholder approval early in 2023.
- The measures described above to revise the operational structure of Blackfriars will allow the COO and HDM time to improve the detail within the business plan to include scheme appraisals, supporting financial analysis and communications and marketing approaches.

c. Service Level Agreement (SLA):

- The SLA between the Council and the shareholder, which defines the scope of the roles being undertaken by Council officers on behalf of RDCHC, is still being finalised. Trowers & Hamblins has been instructed and a first draft of the document is under review by the shareholder and RDCHC.

d. Internal audit:

- RDCHC remains in consultation with the Shareholder's internal audit team, and its own independent legal advisors, to ensure that its own financial audit requirements are met, in addition to remaining compliant with the Shareholder's audit demands of it.

Section 2: Shareholder Representative's View

10. RDCHC is not a department of the Shareholder and is a non-contracting entity, albeit one that is wholly owned by the Shareholder. RDCHC and its shareholder must avoid the risk that RDCHC drift into the status of a Teckal company. Teckal companies are subject to complex regulation and are subject to the same procurement regulations as the Council.
11. Therefore, there is a balance to achieve in the governance arrangements between the Shareholder and RDCHC. The RDCHC Board must be able to demonstrate independence in its decision making and discharging its responsibilities under the Companies Act 2006. There is a residual risk that, without proper governance arrangements, the Board becomes subject to informal influence from Council officers; further, there is a risk to Council officers of their becoming 'shadow directors' of the RDCHC Board and personally liable for the RDCHC decisions.
12. The shareholder representative has considered the findings of the C&CC report, as well as the views of the RDCHC Board, alongside discussions with the RDCHC Chairman and a range of independent advice. A high-level diagram of the governance arrangements that will be put in place for the oversight of RDCHC by the Shareholder can be found at Figure 1.

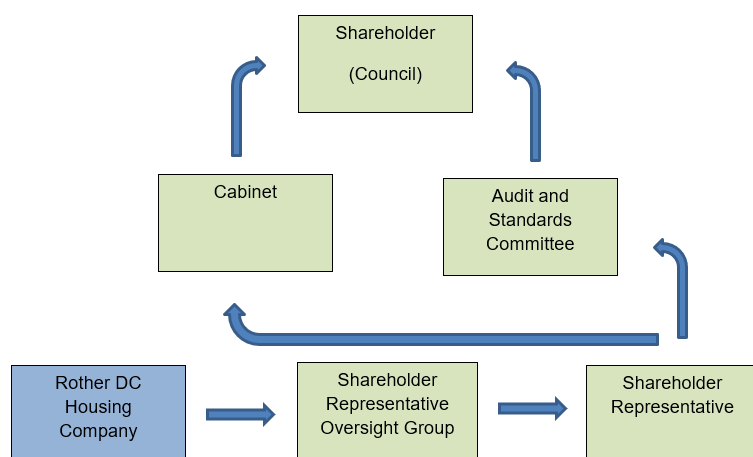


Fig. 1

13. There will continue to be an independent role for the Audit and Standards Committee in receiving periodic updates from the Shareholder Representative on the governance arrangements of the company and any significant changes to these. The Council will continue to receive annual requests from the RDCHC to approve its business plans and the Council's Overview and Scrutiny Committee remains able to request performance updates on the RDCHC as it sees fit.

Shareholder Representative's Oversight Group (SROG)

14. The draft Terms of Reference of the (SROG) is attached at Appendix C. The aims of the group are:

- To represent the interests of the Shareholder Representative and ensure use of reserved powers, delegated from Council are exercised responsibly and reasonably in consultation with the Cabinet Portfolio Holder for Finance and Performance Management.
 - To oversee the company's activity and ensure that RDCHC has enough freedom to achieve its objectives as a non-contracting entity and ensure the Council has enough control to protect its investments in the RDCHC.
 - To facilitate the RDCHC in demonstrating openness and transparency to its Shareholder
 - To ensure that, when required, investment can be secured by RDCHC from the Shareholder against approved business plans.
 - To provide the Shareholder Representative with financial performance and risk information against RDCHC business plan objectives and approved business cases.
15. The SRG will comprise of the following RDC lead officers, deputies may attend as required:
- Director of Place and Climate Change
 - Senior Housing Manager
 - Chief Finance Officer
 - Corporate Programme and Projects Officer
16. The Shareholder Representative understands that the RDCHC will be completing several next steps with the aim of refining existing governance arrangements, to complement actions being taken by the Shareholder Representative. These are:
- The Shareholder Representative will consider whether or not Council officers will be appointed the RDCHC Board.
 - The SRG is already formed and will begin to meet with the RDCHC officers on a monthly basis. It is relevant to note that representatives of the lead SRG officers attend weekly coordination meetings between the RDCHC and Shareholder officers as we work together to deliver two complex contracts at Blackfriars.
 - The first draft of the SLA is being considered by both parties and the SRG will support with its completion.
 - The RDCHC is engaging with the Shareholder's internal audit team to support Shareholder audit requirements.
 - The RDCHC is finalising recruitment packs and will be advertising for non-executive directors shortly.
 - RDCHC is embarking upon a review of its business plan; it expects this to be completed by early 2023 for submission to the Shareholder for approval.

Conclusion

17. RDCHC is still a relatively new entity and is embarking upon a high risk and marginally viable project at Blackfriars while it also finalises implementing its governance and finance policies and procedures. The recommendations of the RDCHC, following its own internal governance review, have been considered by the Shareholder Representative and have informed the next steps highlighted in the report.

Financial Implications

18. As detailed within the report, it is a priority for the Council as shareholder to ensure that it monitors the financial performance of the company and ensure its investments in RDCHC are protected and the risks of financial losses minimised.

Legal Implications

19. External legal advice has been obtained by both the Council and RDCHC in terms of their respective roles and functions.

Human Resources Implications

20. The human resource implications are detailed within the main body of the report.

Risk Management

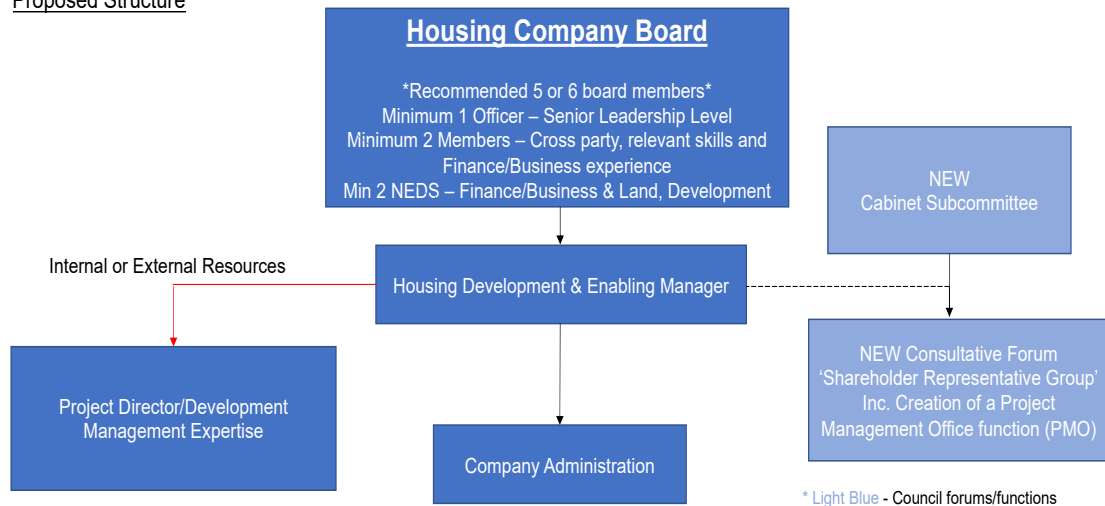
21. The Council has approved up to £80m of investment in RDCHC for it to achieve its business plan objectives. The level of investment in the Blackfriars project, inclusive of the site preparation, spine road and housebuilding phases, must remain viable overall if it is to be delivered successfully. The governance arrangements of RDCHC and Council need to be robust, open and transparent, as well as adequately and appropriately resourced, to ensure that the investment is protected, risks are minimised, and RDCHC's business plan objectives achieved.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	External Consultation	No
Environmental	No	Access to Information	No
Risk Management	Yes	Exempt from publication	No

Chief Executive:	Malcolm Johnston
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Appendices:	A C&CC Recommendations B RDCHC Recommendations C SHRG Draft ToR (attached)
Relevant Previous Minutes:	CB20/21 CB21/86 AS22/20
Background Papers:	Local Partnerships Local-authority company review guidance v1.pdf (localpartnerships.org.uk)
Reference Documents:	None



Proposed Structure



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Rother DC Housing Company

Summary Governance Recommendations

Introduction

1. The Board of the Rother District Housing Company has prepared detailed responses about its governance, both internally and in its relation to the Council. What follows is a summary of our main conclusions.
2. The Board believes the Company will have a vital role in the construction of much-needed environmentally sound homes in Rother. The Board would like it to take on an enlarged role, developing potentially profitable sites throughout the District through Joint Ventures with both a substantial commercial partner, or partners, and with smaller, more local concerns throughout the AONB. This would enable the company to make a larger contribution to council funds, and release the company, in whole or in part, from reliance on council borrowing as its main funding mechanism.
3. The Board believes it is important to strike a balance between the relative autonomy of the company, giving it flexibility and responsiveness, and the oversight of the Council, providing unity between council and company aims and purposes, and ensuring strategic alignment and financial prudence.
4. The Board believes this approach is mirrored in the Local Partnerships recent report, Local-authority company review guidance, which is widely regarded as setting the 'gold standard' in this field.

[Local Partnerships Local-authority company review guidance v1.pdf \(localpartnerships.org.uk\)](http://localpartnerships.org.uk)

5. The Board recognises that the Council has the right to make decisions in this area but wishes its views to be considered carefully.
6. The Board believes that the Company needs, as a priority, to recruit expert Non-Executive Directors, and has taken an initiative to achieve this. It believes that this is the best way to create confidence in the Company and raise its profile in Council deliberations. Legal advice from Trowers, the Company solicitors, agrees with this priority.
7. The Board believes that an equal priority is to develop a more detailed Business Plan including short, medium term and long-term strategic planning and financial forecasts. It envisages future iterations of such a document to be at the centre of annual reports to the Overview and Scrutiny Committee, and the Audit and Standards Committee.
8. The Board would welcome the setting up of a Shareholder's Committee but would see its central role as connected with the Business Plan, as above. It would welcome the involvement of the 151 Officer on that Committee as a guarantee of financial prudence as central to its deliberations.

9. The Board believes that it is necessary to retain the four Councillor appointees on the Board, both to provide continuity, and to ensure wide representation of all groups on the Council.
10. The Board believes that the structure outlined above will provide the assurance and oversight that the Council requires.
11. The Board rejects the idea of a Senior Council Officer on the Board. The Chief Executive has suggested that, following the appointment of non-Executive Directors, a new Skills Audit of the Board should take place, and the Council would then look to provide an Officer who could fill any gaps. It regards this as a constructive and positive contribution to the debate
12. The Board believes that the Company should, as now, have its own Chief Operating Officer. It is clear that the Council and the Company would benefit from a separation of this role from the Council in due course. It believes that the Chief Operating Officer should continue to report to the Board. This is regarded as best practice in company governance circles.
13. There are regular meetings now between the Chair of the Board, the Chief Operating Officer, the Housing Development Manager, and the Project Support Officer. These are invaluable and should continue.
14. Meetings have already taken place involving the Chair of the Board and the Chief Executive with involvement by other officers and a Senior Councillor. It is envisaged that such meetings will become a more regular occurrence, and these are also of great value.
15. There are also regular Board meetings, detailed discussions between Board members, and occasional meetings involving all Board members. These are ongoing. The contributions of all contribute substantially to the running of the company.
16. The above is an illustration of how form can follow function in company governance, and achieve the desired balance between company freedom and council oversight, justifying the setting up of the company as a delivery entity in the first place.
17. The Board records its appreciation of the excellent work of Joe Powell, Amy Fearn, and all officers and employees.

Richard Thomas, Chair of the Board.
25 November 2022

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Terms of Reference

- Aims and Origin** - On 27 July 2020, the Council approved the appointment of directors to enable the incorporation of Rother District Council's local housing company, Rother DC Housing Company Ltd (RDCHC).

The Council has taken advice on the governance of the RDCHC and identified that the RDCHC must remain a separate entity from the Council; adequate governance arrangements are therefore required to ensure that RDCHC remains separate entity from the Council. The relationship between the Council and RDCHC is dictated by the approved Shareholder Agreement and the RDCHC's strategic objectives are provided by its business plan, approved annually by the Shareholder.

The Council has appointed a Shareholder Representative who is the Chief Executive of the Council. The Shareholder Representative has created a Shareholder Representative Oversight Group to ensure the Housing Company's activity is governed effectively by the Shareholder. The aims of the group are:

- To represent the interests of the Shareholder Representative and ensure use of reserved powers, delegated from Council are exercised responsibly and reasonably in consultation with the Cabinet Portfolio Holder for Finance and Performance Management.
- To oversee the company's activity and ensure that RDCHC has enough freedom to achieve its objectives as a non-contracting entity and ensure the Council has enough control to protect its investments in the RDCHC.
- To facilitate the RDCHC in demonstrating openness and transparency to its Shareholder
- To ensure that, when required, investment can be secured by RDCHC from the Shareholder against approved business plans.
- To provide the Shareholder Representative with financial performance and risk information against RDCHC business plan objectives and approved business cases.

- Scope**
- a. Receive and consider from the RDCHC individual business cases for investment,

against the parameters of the approved business plan and make recommendations to the Shareholder Representative to this end.

- b. It is not within the scope of the Shareholder Representative Group to seek to influence the function of the RDCHC Board as it implements and operates its approved business plan and development projects.
- c. Meet regularly with RDCHC to receive and monitor performance reports against approved business plan objectives and individual business cases, to include:
 - Financial performance
 - Risk registers
 - Project timeframes
 - Design briefs
- d. Provide regular performance reports to the Shareholder Representative.
- e. Support the RDCHC to communicate effectively with the Shareholder Representative and advise and guide RDCHC to secure timely decisions from the Shareholder Representative as required.
- f. Members of the Shareholder Representative Group will attend in person each meeting or send named deputies in their absence.

Membership - Head of Finance
Director - Place and Climate Change
Corporate Programme and Projects Officer

Council Lead - Malcolm Johnston

Rother District Council

Report to: Audit and Standards Committee

Date: 5 December 2022

Title: Internal Audit Report to 30 September 2022

Report of: Gary Angell, Audit Manager

Purpose of Report: To report on Internal Audit activity in the second quarter of 2022/23, to provide a progress update on the implementation of audit recommendations made in earlier periods, and to agree the revised Internal Audit Charter.

Officer

Recommendation(s): It be **RESOLVED:** That:

- 1) the Internal Audit report to 30 September 2022 be noted; and
- 2) the revised Internal Audit Charter shown in Appendix C be approved.

Introduction

1. The Council is required to ensure that it has reliable and effective internal control systems in place. The adequacy of these systems is tested by both Internal and External Audit.
2. The Council's Internal Audit Service operates in accordance with the Public Sector Internal Audit Standards. It is a requirement of these Standards that we report to the Audit and Standards Committee on audit matters and any emerging issues not only in relation to audit, but also to risk management and corporate governance.

Current Position

3. Progress on the 2022/23 Audit Plan is currently running a few weeks behind schedule. This is partly due to additional testing being required on some audits, but is mostly a result of resourcing issues within the Internal Audit Team over the past three months. It is hoped that this situation will be resolved in the near future, but in the meantime, the Audit Manager has had to postpone one audit (ICT Asset Management) and may have to reduce the coverage of other audits to ensure they are still deliverable.

Summary of Activity to 30 September 2022

4. Three audit reports were completed in the quarter. An overview of the findings arising from each of these audits is given in the Executive Summaries which are reproduced in Appendix A.
5. Two of these audits (Building Maintenance and Reprographics Sales Income) provided substantial assurance, but the third (Property Investment) only received a limited assurance rating. This is because the audit raised concerns about the adequacy of the controls for monitoring the ongoing financial viability of development sites purchased under the Property Investment Strategy.

However, it can be seen from the management comment included at the end of the executive summary that the Director – Place and Climate Change does not agree with this assessment or the action recommended to address the issue.

6. Internal Audit based its assessment on the on the fact that no evidence could be provided that robust financial appraisals and ongoing viability reviews were taking place at the time of the audit (July 2022) despite rising inflation and the cost of borrowing having increased significantly. These costs have continued to rise in recent months. It would also appear that the requirement in Financial Procedure Rules to report the estimated final costs for all capital projects to the Senior Leadership Team on a quarterly basis is not being adhered to.
7. Our primary concern here is that without regular re-appraisal, officers may fail to promptly identify if a project is no longer financially viable, resulting in abortive work, the cost of which will ultimately have to be met from the Council’s revenue budget. We are not suggesting that a final decision on the ongoing financial viability of any capital project should be determined based purely on an arbitrary uplift for inflation and increased borrowing costs, but if the results of such analyses indicate that there may be a problem then this could be explored further rather than waiting for the next RIBA development stage which may not be reached for some time.

Implementation of Audit Recommendations

8. Each quarter, Members are updated on the progress made on implementing the audit recommendations reported at previous meetings. Appendix B shows a summary of the current position.
9. There are currently eight recommendations in the ‘Old Years’ section. This is made up of the two 2018/19 recommendations reported previously plus six recommendations from 2021/22. Most of these are in hand but no further progress has been reported on either of the 2018/19 recommendations this quarter.
10. The progress made to date on the current year recommendations is encouraging with most having been implemented and the rest in the process of being resolved.

Audits Planned Next Quarter

11. The audits currently scheduled to take place in the fourth quarter of 2022/23 are as follows:

January 2023	Benefits
	ICT Governance
February 2023	Main Accounting
	Payroll
March 2023	Debtors
	Licencing

Risk Management

12. The issues raised by Members and the Independent Person at the last Audit and Standards Committee meeting have been reported back to the Corporate Management Team for consideration. The Corporate Risk Register will be updated in due course and the next version reported to this Committee in March 2023.

Internal Audit Charter

13. The Standards require the development and adoption of an Internal Audit Charter to define the purpose, authority and principal responsibilities of the Internal Audit Service. The existing charter was last revised in February 2022 but now needs some further minor amendments to reflect the new senior management structure. A revised Internal Audit Charter is therefore provided in Appendix C for Members' consideration and approval.

Conclusion

14. Progress on the 2022/23 Audit Plan is currently running behind schedule due to circumstances beyond our control. Some audit coverage may need to be reduced to ensure the rest of the plan is deliverable.
15. Three audits were completed in the second quarter of 2022/23. One of these received a limited assurance rating, but the validity of this assessment is disputed by the Director – Place and Climate Change.
16. Progress on the outstanding audit recommendations continues to be monitored.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	External Consultation	No
Environmental	No	Access to Information	No
Risk Management	No	Exempt from publication	No

Chief Executive:	Malcolm Johnston
Report Contact Officer:	Gary Angell, Audit Manager
e-mail address:	gary.angell@rother.gov.uk
Appendices:	A – Audit Reports issued during Quarter to 30 September 2022 B – Summary of Progress on Recommendations Made up to 30 June 2022 C – Revised Internal Audit Charter
Relevant Previous Minutes:	AS22/30 Internal Audit Report to 30 June 2022
Background Papers:	None.
Reference Documents:	None.

BUILDING MAINTENANCE AUDIT

Service Manager: Lee Beckham and Maria Benford

Officer(s) Responsible for Implementing Recommendations: Lee Beckham

Overall Level of Assurance: **SUBSTANTIAL**

Purpose and Objectives

The purpose of the audit is to provide organisational and departmental management with an assurance as to the adequacy of the control systems based on compliance with the control objectives set out in the table below.

These objectives are designed to assess the extent to which the organisation meets its legal requirements, its own needs and those of its stakeholders and how the control systems in place contribute to the overall governance arrangements and securing value for money from the Council's services and operations.

Background Information

All requests for building maintenance work are now managed using Maintenance Tracker software which was developed in-house. This is a major improvement on the spreadsheet-based system seen at previous audits as it allows Estates Maintenance Manager far greater control over allocating work and monitoring progress.

Limitations of Coverage

Whilst the audit included an overview of the Maintenance Tracker's functionality, no detailed testing of the system was undertaken on this occasion due to time constraints. A walkthrough check was however carried out to confirm that the system is operating as expected.

Audit checks on services contracts was limited to the fire and intruder alarm systems in the main admin buildings.

Control Objectives

The audit opinion is based on the extent of compliance with the objectives (below), which have either been met in full (**M**), partially met (**P**) or not met (**N**).

In-House Repairs and Maintenance – Work requests are properly authorised, and checks are carried out to ensure the work is completed satisfactorily.	M
Purchase and Storage of Supplies – Payments to wholesale suppliers are properly authorised, certified for payment and paid promptly. Stock is held securely until it is used.	M
Motor Vehicles – Motor vehicles used by the in-house Building Maintenance team are well maintained and properly insured.	M
Health and Safety – The health and safety needs of Building Maintenance operatives are properly assessed, and suitable training and equipment is provided to enable them to carry out their duties safely.	M

<p>Use of External Contractors – The use of contractors for building maintenance work is controlled, monitored and the work or service provided agreed prior to payment. Inspections are carried out in accordance with servicing contracts.</p>	<p>P</p>
<p>Budget – The budget is monitored and controlled.</p>	<p>M</p>

Level of Assurance

Based on the findings from the audit we have determined that substantial assurance can be given on the governance arrangements.

The only issues found relate to:

- **Electrical Work** – All electrical work and some general building maintenance work is currently undertaken by an external contractor. The total value of this work exceeds £70,000 per annum but has never been subject to a tendering process as individual jobs tend to be priced under £5,000. Given the many jobs carried out by this contractor each year, it is recommended that officers liaise with the East Sussex Procurement Hub with a view to carrying out a tendering exercise for this work.
- **Purchase Orders** – Financial Procedure Rules require that a purchase order is raised in advance of goods or services being requested. This is to ensure that the requested work has been approved and also helps to prevent duplicate payments. However, at present, requisitions for most building maintenance work are not raised until after the work has been completed and the contractor’s invoice has been received. Whilst it is recognised that there will be occasions when emergency work means that the standard process cannot be followed, this should be the exception rather than the rule. The audit therefore recommends requisitions should be raised and approved (and a purchase order produced) prior to work being carried out.

Executive Summary

Overall, the control objectives are considered to have largely been met but we have made one medium and one low risk recommendation to management to further enhance the governance arrangements.

Internal Audit Service
September 2022

REPROGRAPHICS SALES INCOME AUDIT

Service Manager: Graham McCallum

Officer(s) Responsible for Implementing Recommendations: Tony Riggs

Overall Level of Assurance: **SUBSTANTIAL**

Purpose and Objectives

The purpose of the audit is to provide organisational and departmental management with an assurance as to the adequacy of the control systems based on compliance with the control objectives set out in the table below.

These objectives are designed to assess the extent to which the organisation meets its legal requirements, its own needs and those of its stakeholders and how the control systems in place contribute to the overall governance arrangements and securing value for money from the Council's services and operations.

Audit Scope and Limitations

The sole focus of this audit was to check that the income generated from the Reprographics unit's external print work is being correctly recorded, collected and accounted for. This includes all design and print work carried out for private customers and other councils.

The review does not cover internal work, and no assessment was made of how well the unit is performing overall.

Control Objectives

The audit opinion is based on the extent of compliance with the objectives (below), which have either been met in full (**M**), partially met (**P**) or not met (**N**).

All print jobs for external clients are authorised and costed.	P
All expected income is collected and promptly banked.	P

Level of Assurance

Based on the findings from the audit we have determined that substantial assurance can be given on the governance arrangements.

The main issues found relate to:

- **Pricing** – The current prices have not been calculated with reference to actual Reprographics overheads. Management has therefore agreed to liaise with Finance to check that the current pricing is sufficient to cover operational costs whilst still remaining competitive.
- **VAT** – Customers paying in person (i.e. by cash or cheque) are not charged VAT at present. However, the VAT element still has to be accounted for in the Financial system and this effectively reduces the amount of income received. Management will therefore look to introduce VAT receipts so that VAT can be charged for all relevant supplies.

-
- **Cash Reconciliation and Banking** – Whilst audit checks confirmed that most cash received over a recent two-year period could be accounted for, it was found that cash income is not being properly reconciled and checked by a second officer prior to banking nor securely transported to the bank. Management has therefore agreed to take immediate steps to improve control.

On a more positive note, the audit also highlighted that the demand for private work has steadily increased over the past three years despite the fact that the Council's external printing services are not actively marketed. This means that there may be potential to further increase the income generated once the pricing and VAT issues are satisfactorily resolved.

Executive Summary

Overall, the control objectives are considered to have largely been met but we have made three medium and one low risk recommendation to management to further enhance the governance arrangements.

Internal Audit Service
September 2022

PROPERTY INVESTMENT AUDIT

Service Manager: Graham Burgess

Officer(s) Responsible for Implementing Recommendations: Graham Burgess

Overall Level of Assurance: **LIMITED**

Purpose and Objectives

The purpose of the audit is to provide organisational and departmental management with an assurance as to the adequacy of the control systems based on compliance with the control objectives set out in the table below.

These objectives are designed to assess the extent to which the organisation meets its legal requirements, its own needs and those of its stakeholders and how the control systems in place contribute to the overall governance arrangements and securing value for money from the Council's services and operations.

Control Objectives

The audit opinion is based on the extent of compliance with the objectives (below), which have either been met in full (**M**), partially met (**P**) or not met (**N**).

<p>Strategy – There is a property investment strategy which outlines the criteria for the procurement of property which has been approved by Members. The strategy is in accordance with the Department for Levelling Up, Housing and Communities and CIPFA guidelines.</p>	<p>P</p>
<p>Property Identification and Evaluation – There are clearly defined procedures for the identification of suitable investment properties. A transparent SWOT analysis and risk assessment process is undertaken before property purchases are recommended to Members, and the ongoing financial viability of development sites is kept under review once they have been acquired.</p>	<p>N</p>
<p>Scrutiny – Investment decisions are subject to the scrutiny of trained Members with the requisite skills and knowledge to appraise the recommendations made to them by officers, prior to formally recommending that the Head of Paid Service can proceed with any purchase.</p>	<p>M</p>
<p>Due Diligence – There is sufficient due diligence prior to the purchase of properties.</p>	<p>M</p>
<p>Completion – The Council has received all relevant legal documentation following the completed purchase of an acquisition including title deeds and land registry documents.</p>	<p>M</p>

Level of Assurance

Based on the findings from the audit we have determined that only limited assurance can be given on the overall governance arrangements due to the issue outlined below. It should however be acknowledged that the many control issues highlighted by the

previous audit review (which also received a limited assurance rating) have since been resolved.

The main issue found during this audit concerns the inadequacy of existing controls for monitoring the ongoing financial viability of development sites purchased under the Property Investment Strategy.

For example, the Barnhorn Green site was acquired in 2019 but build costs have risen significantly since the initial (pre-acquisition) financial appraisal was carried out and the cost of borrowing has also increased over the same period. As at July 2022, Internal Audit calculate that rent receipts would need to be at least 50% to 60% higher than the 2019 estimates for the scheme to remain viable. Financial viability is flagged as high risk in the risk registers for this project, but no evidence could be provided that the stated mitigations of “robust financial appraisals and ongoing viability reviews” are being undertaken on a regular basis. Financial Procedure Rule G36 also states that the estimated final costs for all capital projects should be reported to the Corporate Management Team (now Senior Leadership Team) on a quarterly basis. In order to determine the estimated final costs, factors such as inflationary costs and changes to interest rates would need to be taken into account.

Given that we are in a period of high inflation, rising interest rates and there are known supply issues within the building industry, it is now more important than ever that regular re-appraisals of financial viability take place.

Whilst it is acknowledged that all development projects are subject to a final affordability check by the Chief Finance Officer and Member approval before they are allowed to proceed, regular re-appraisals would enable the Council to promptly identify if the viability has reached a critical point so that an early decision can be made to halt the project, if necessary. Failure to do so risks increasing the financial impact of abortive work, ongoing professional fees/payments to consultants and officer time if a project does not then proceed

The audit report therefore recommends that an urgent and detailed review of financial viability for the Barnhorn Green site and all other property investment development sites should be carried out.

Executive Summary

Overall, the control objectives are considered to have only been partially met. We have made one high and one low risk recommendation to management in order to improve the governance arrangements and reduce the risk of financial loss. The high risk recommendation and management's response to it will be included in the quarterly report to the Audit and Standards Committee.

Internal Audit Service
August 2022

Management Comment

This ‘Limited Assurance’ rating is based upon the scheme being high risk and misunderstands the risk management and governance systems already in place related to property and asset development. Whilst it is recognised that regular financial appraisals are required to ensure continued viability of schemes, recommending quarterly reappraisals is nonsensical and will lead to improper decision making.

Property development programmes are best described through the RIBA phase process outlined below:

RIBA Plan of Work and Interior Designers

Stage 0 - Strategic Definition.

Stage 1 - Preparation and Briefing.

Stage 2 - Concept Design.

Stage 3 - Spatial Coordination.

Stage 4 - Technical Design.

Stage 5 - Manufacturing and Construction.

Stage 6 - Handover.

Stage 7 - Use.


For clarity, planning permission is usually granted at the end of phase three. The current risk management approach conducts viability assessments at each of the ends of stages 1-3. Additional viability testing would be undertaken at stage 4 if a traditional, rather than design and build, approach was opted for. Quarterly viability assessments, as recommended by the auditor, would apply generic inflationary increases against an ever-evolving spatial design rather than recognising a dynamic process and the existence of a complex supply chain in which prices move up and down dependent on a variety of economic circumstances. This blunt instrument runs the risk of decisions being made on poor quality information, could make schemes appear more viable as well as less viable than they are, and is contrary to industry best practice. It is agreed that robust and clear financial viability assessments should be undertaken at regular intervals, but it is my recommendation that these intervals remain stage based rather than time based.

Director – Place and Climate Change
October 2022

PROPERTY INVESTMENT AUDIT

High Risk Recommendations and Management Responses

The recommendations below arise from audit findings which carry a **High** risk and which have resulted in the control objective not being met (**N**). Management's response to the recommendation is also included and where the recommendation or an alternative action which will satisfy the control objective is agreed, an implementation date is shown. Progress against these recommendations will be included in the quarterly report to Audit and Standards Committee.

Audit Ref	Finding/Risk	Recommendation	Risk	Management Response
2.5	<p>Finding</p> <p>An audit reworking of the financial viability calculation for the Barnhorn Green development was carried out. This factored in both cost increases calculated by the Council's employer's agent for the project and prevailing PWLB interest rates, but no other variables.</p> <p>These calculations brought into question whether future rental income would deliver the yields anticipated at the start of the project.</p> <p>A risk register produced by the Council's external project manager already highlights the viability risks in relation to this project, and a significant proportion of these are marked as high risk.</p> <p>The Council's own internal risk register also flags financial viability as an ongoing high risk and states that mitigating action will include "robust financial appraisals and ongoing viability reviews" but no evidence could be provided that these actions are being taken on a regular basis. Financial</p>	<p>An urgent and detailed review of financial viability for the Barnhorn Green site and all other property investment development sites should be carried out. Projected inflationary costs and margins for interest rate rises should be factored in and the Chief Finance Officer should be consulted as part of this process.</p>	<p>High</p> 	<p>The Property Investment & Regeneration Manager will liaise with Finance and the Project Manager for the Barnhorn Green site to determine the viability. This will be carried out before a Cabinet report on funding for this scheme is submitted in October 2022.</p> <p>Viability may be dependent on the doctor's practice being prepared to pay rent that would make the scheme viable under current economic conditions.</p> <p>The viability for other property investment development sites will also be reviewed and monitored in liaison with Finance.</p> <p>Agreed Implementation Date</p> <p>October 2022</p> <p>Responsible Officer</p> <p>Graham Burgess</p>

Audit Ref	Finding/Risk	Recommendation	Risk	Management Response
	<p>Procedure Rule G36 also states that the estimated final costs for all capital projects should be reported to the Corporate Management Team (now Senior Leadership Team) on a quarterly basis.</p> <p>All of the above factors therefore indicate that the situation now needs to be urgently reviewed.</p> <p>The Council should also consider the interest rate risks and inflation risks that could negatively impact on the viability of other development sites.</p> <p>Risk</p> <p>Financial loss to the Council if rental income does not sufficiently cover the costs of servicing loan interest and repayments.</p>			

Summary of Progress on Recommendations Made up to 30 June 2022

Old Years: Audit recommendations made in 2018/19 (2) and 2021/22 (6)

Previous quarter's performance shown in brackets

Risk	Issued	Implemented	Work-in-Progress	Not Started
High	4	4 (4)	0 (0)	0 (0)
Medium	64	58 (56)	4 (8)	2 (0)
Low	46	44 (43)	1 (3)	1 (0)
Total	114	106 (103)	5 (11)	3 (0)
		93.0% (90.4%)	4.4% (9.6%)	2.6% (0%)

Note – All audit recommendations made in 2019/20 and 2020/21 have been resolved.

Breakdown of outstanding audit recommendations by Service Manager:

Antony Baden (Chief Finance Officer)

- Procurement (2018/19) – issued 05/10/18. Recommendation to formalise an SLA for the service provided by the East Sussex Procurement Hub (Medium).
- Creditors (2021/22) – issued 01/02/22 (1 Medium)

Graham Burgess (Property Investment & Regeneration Manager)

- Estates Income (2021/22) – issued 30/06/21 (1 Medium)

Graham McCallum (ICT Manager & Data Protection Officer)

- ICT Governance (2018/19) – issued 12/04/19. Recommendation to produce a new ICT Disaster Recovery Plan (Medium)
- Data Protection (2021/22) – issued 25/06/21 (2 Medium & 1 Low)

Joe Powell (Head of Housing & Community)

- Housing Temporary Accommodation (2021/22) – issued 20/09/21 (1 Low)

Current Year: Audit recommendations made in 2022/23 (up to 30 June 2022)

Risk	Issued	Implemented	Work-in-Progress	Not Started
High	1	1	0	0
Medium	9	6	3	0
Low	3	2	1	0
Total	13	9	4	0
		69.2%	30.8%	0%

INTERNAL AUDIT CHARTER



Introduction

1. This Charter defines the purpose, authority and principal responsibilities of the Internal Audit Service.

Definition of Internal Audit

2. The definition of Internal Audit specified by the Chartered Institute of Internal Auditors (IIA) and adopted by the Chartered Institute of Public Finance and Accountancy (CIPFA) reads as follows:

“Internal Auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation’s operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.”

Requirement for Internal Audit

3. There is a statutory requirement for Rother District Council to provide an Internal Audit Service. This is stated in Regulation 5 (1) of the Accounts and Audit Regulations 2015 which requires that *“a relevant authority must undertake an effective Internal Audit to evaluate the effectiveness of risk management, control and governance processes, taking into account public sector internal auditing standards or guidance”*.

Standards

4. The standards for the work of Internal Audit are laid down in the Public Sector Internal Audit Standards (hereafter referred to as “the Standards”). These standards, which also relate to CIPFA and their professional requirements, were last updated in April 2017.
5. The Standards are based on the mandatory elements of the IIA International Professional Practices Framework (IPPF) as follows:
 - Definition of Internal Auditing;
 - Code of Ethics; and
 - International Standards for the Professional Practice of Internal Auditing (including interpretations and glossary).
6. The Standards also state the Mission of Internal Audit and the Core Principles for the Professional Practice of Internal Auditing.

7. It is a mandatory requirement that Internal Audit complies fully with all of these elements and they are also included in this Charter.
8. The Standards set out the responsibility for the “Chief Audit Executive” to ensure compliance. There is no requirement within the Standards to adopt this job title and this role is fulfilled by the Audit Manager.
9. In addition to the Standards, the Internal Audit Service is also governed by the Council’s Financial Procedure Rules.

Mission of Internal Audit

10. The Standards include the following mission statement:

“To enhance and protect organisational value by providing risk-based and objective assurance, advice and insight.”

Core Principles for the Professional Practice of Internal Auditing

11. The Standards state that all the following Core Principles should be present and operating effectively for an Internal Audit function to be considered effective:
 - Demonstrates integrity;
 - Demonstrates competence and due professional care;
 - Is objective and free from undue influence (independent);
 - Aligns with the strategies, objectives, and risks of the organisation;
 - Is appropriately positioned and adequately resourced;
 - Demonstrates quality and continuous improvement;
 - Communicates effectively;
 - Provides risk-based assurance;
 - Is insightful, proactive, and future-focused;
 - Promotes organisational improvement.
12. The Internal Audit Service strives to meet these requirements (and the Mission of Internal Audit) through compliance with the Standards.

Code of Ethics

13. All Internal Auditors must conform to the Code of Ethics set out in the Standards. The Code of Ethics requires that Internal Auditors carry out their duties with integrity and objectivity, to protect the confidentiality of all information acquired in the course of their work, and for them to only engage in services they are competent to perform.

Definition of the Board and Senior Management

14. Under the Standards, this Charter is required to define the “Board” and “Senior Management”. Both the Board and Senior Management have specific and

complementary roles and responsibilities set out within the Standards. With the exception of matters relating to employment (see below), the “Board” is the Audit and Standards Committee.

15. The Audit Manager is not a statutory post within the definition of the Local Government Act 1972. The Head of Paid Service and Senior Management are therefore responsible for the appointment and remuneration of the Audit Manager where the service is provided in-house.
16. “Senior Management” comprises the members of the Senior Leadership Team.

Scope and Objectives of the Internal Audit Service

17. The Audit Manager is required to manage the provision of a complete Internal Audit Service to the authority which will include systems, probity, computer and contract audits.
18. There are no limitations on the scope of activities of the Internal Audit Service. This allows for unrestricted coverage of all the authority’s activities, including both financial and non-financial systems of internal control.
19. The main objectives of the Internal Audit Service are to:
 - independently review and appraise the effectiveness of the Council’s risk management, control and governance processes;
 - recommend improvements in control, performance and productivity in achieving corporate objectives;
 - contribute to and support the objectives of the Section 151 Officer by promoting the need for sound financial systems;
 - support the Monitoring Officer in the discharge of his/her responsibilities for maintaining high standards of governance, conduct and ethical behaviour;
 - advise on risk, control and governance issues in respect of new activities, major system changes and other areas of concern, and to facilitate good practice in managing risks;
 - work in partnership with the External Auditors; and
 - investigate allegations of fraud or irregularity, identify fraud as a consequence of its work, and act as a visible deterrent to potential wrongdoers.

Rights of Access

20. The rights of access for the Internal Audit Service are provided for by the Accounts and Audit Regulations 2015. Regulation 5 (2) states that:

“Any officer or member of a relevant body must, if required to do so for the purposes of the Internal Audit:

(a) make available such documents and records; and

(b) supply such information and explanation as are considered necessary by those conducting the Internal Audit.”

21. Regulation 5 (3) also goes on to state that the definition of “documents and records” includes information recorded in an electronic form.
22. There are consequently no limitations on Internal Audit's access to records. Internal Audit staff have the authority to:
 - access Council premises at reasonable times;
 - access all assets, records, documents, correspondence and control systems;
 - receive any information and explanation considered necessary concerning any matter under consideration;
 - require any employee of the authority to account for cash, stores or any other authority asset under his/her control;
 - access records belonging to third parties, such as contractors (provided this right of access is specified in their contract); and
 - have direct access to the Chief Executive, Section 151 Officer, Monitoring Officer, Heads of Service and any Member or body of Members considered appropriate and any other person charged with the governance of the authority.

Main Areas of Work

23. Internal Audit's main areas of work relate to the following key areas:
 - Assurance Work
 - Consultancy Work
 - Counter Fraud Work

Assurance Work

- 23.1 The primary purpose of Internal Audit is to independently review and appraise the Council's key risk management, control and governance processes and to provide assurance on their effectiveness.
- 23.2 Internal Audit uses a risk-based approach to evaluate a broad range of activities including an annual review of the key financial systems (or Governance Audits). These reviews provide reasonable assurance that corporate objectives will be achieved, with particular reference to:
 - the reliability and integrity of financial and operational information;
 - the effectiveness and efficiency of operations and programmes;
 - safeguarding of assets and interests from losses of all kinds, including those arising from fraud, irregularity and corruption;
 - compliance with laws, regulations, policies, procedures and contracts;
 - the economic and efficient use of resources (value for money); and
 - effective monitoring systems and optimum use of performance management information.

Consultancy Work

23.3 Internal Audit give advice on risk, control and governance issues in respect of new activities, major system changes and other areas of concern. This work can take any form, provided that the independence of the service is not compromised but will typically include special reviews or assignments where requested by Management, which fall outside the approved work plan and for which a contingency is included in the Audit Plan. Any consultancy work known about in advance will however be itemised in the Audit Plan. There will be no significant variation in consultancy work without approval by the Board.

Counter Fraud Work

23.4 Management have clearly defined responsibilities for risk management, internal control and preventing fraud and corruption, which are set out in the authority's Financial Procedure Rules and the Anti-Fraud and Corruption Framework.

23.5 The Internal Audit Service also has a role in fraud prevention, detection and investigation. Its Auditors are required to consider the possibility of fraud in all systems they review, and work with Management to make sure that the correct controls are in place to reduce the likelihood of fraud occurring. The fact that absolutely any Council activity can be subject to Internal Audit review also acts as a deterrent to potential fraudsters.

23.6 Other counter fraud activities carried out by the Internal Audit Service include:

- the development and maintenance of the Anti-Fraud and Corruption Framework;
- coordinating the National Fraud Initiative data matching exercises and assisting with the analysis of the results;
- the investigation of any areas of potential fraud or error identified through routine audit work or brought to its attention by Management. The Audit Manager will investigate any allegations of fraud or corruption involving staff, Members or contractors;
- reviewing and acting upon whistleblowing referrals; and
- the proactive gathering of intelligence on areas of potential fraud; examining individual cases for evidence of error or wrongdoing; and liaising with the relevant departments to stop or recover losses where fraud is suspected.

Audit Strategy and Work Plan

- 24 In order for the Internal Audit Service to accomplish its objectives, the Audit Manager will:
- carry out an annual risk assessment of all Council activities and ensure that any areas deemed as high risk are reviewed within a year, and all medium risk items are reviewed within two to three years;
 - prepare a detailed annual Audit Plan setting out the work to be undertaken in any given financial year. This work will be completed in consultation with Senior Management, Heads of Service and Service Managers reported to the Audit and Standards Committee for approval by the Board (note that the “Board” may approve, but not direct the plan);
 - prepare the Internal Audit Budget and Resource Plan;
 - ensure a system of close supervision of audit work and maintain a review of audit files, adherence to standards and quality of audits;
 - formally report the results of audits and the recommendations made to Senior Management, other relevant managers and the Board. Where Management has accepted a level of risk that may be unacceptable to the Council and this is not resolved with Senior Management, the Audit Manager will report this to the Board;
 - follow up audit recommendations to make sure that corrective action is taken;
 - provide an annual audit opinion to those charged with governance based on an objective assessment of the framework of governance, risk management and control, sufficient to inform the Council’s Annual Governance Statement; and
 - undertake an annual review of the effectiveness of Internal Audit and report the outcomes to Senior Management and the Board as part of the Quality Assurance and Improvement Programme (QAIP). At least once every 5 years, the Internal Audit Service will also commission an external assessment or peer review.

Resources

25. The resources available to Internal Audit are finite; however it is through the audits undertaken annually that Internal Audit determines a level of confidence on the control environment within the authority. Such audits allow the Section 151 Officer to place reliance on the work undertaken and to gain assurance on the control environment from the independent review of the key financial systems. A set of Governance Audits has been established which will be undertaken within each financial year. This will be complemented by a regular review of those areas identified as high or medium risk. This will ensure that key work streams which are considered business critical or of higher risk to the Council are reviewed on a timely basis. This process will largely determine the level of resources required.

Staffing

26. The Internal Audit Service at Rother District Council is provided by an in-house team.
27. The Standards state that *“Internal Auditors must possess the knowledge, skills and other competencies needed to perform their individual responsibilities. The Internal Audit activity collectively must possess or obtain the knowledge, skills and competencies.”*
28. The Audit Manager must hold a professional qualification (CMIIA, CCAB or equivalent) and be suitably experienced. The Audit Manager is a Chartered Member of the Institute of Internal Auditors (CMIIA).
29. The job descriptions and recruitment processes provide for the appointment of individuals with an appropriate set of skills, competencies and qualifications to meet the standard, either individually or as a combined Internal Audit Service.
30. All Internal Audit staff are trained in order to be able to perform each element of their assignments with due professional care.
31. All Internal Audit staff are encouraged to enhance their knowledge, skills and other competencies through continuing professional development (CPD). Where staff are members of professional bodies, they must also comply with any CPD requirements of their membership.

Independence

32. The main determinant of the effectiveness of Internal Audit is that it is (and seen to be) independent in its planning and operation. To ensure this, Internal Audit will operate within a framework that allows:
 - unrestricted access to Senior Management;
 - reporting in its own name; and
 - segregation from line operations.
33. The Internal Audit Service is an independent unit within the Deputy Chief Executive’s directorate and the Audit Manager reports direct to the Deputy Chief Executive.

Non-Audit Duties and Avoidance of Conflicts of Interest

34. Every effort is made to preserve objectivity by ensuring that all Internal Auditors are free from any conflicts of interest and the undertaking of non-audit duties is kept to a minimum. Internal Auditors are required within the Standards to refrain from participating *“in any activity or relationship which may impair or be presumed to impair their unbiased assessment.”*
35. A conflict of interest is a situation in which an Internal Auditor, who is in a position of trust, has a competing professional or personal interest. Such competing interests can make it difficult to fulfil his or her duties impartially. A conflict of interest exists even if no unethical or improper act results. A conflict

of interest can create an appearance of impropriety that can undermine confidence in the Auditor, the Internal Audit Service, and the profession. A conflict of interest could impair an individual's ability to perform his or her duties and responsibilities objectively.

36. Where the Audit Manager has or is expected to have roles and/or responsibilities that fall outside of internal auditing, safeguards must be put in place to limit impairments to independence and objectivity. The Audit Manager must also highlight any potential or perceived impairment to the Board. The Board should then approve and periodically review any safeguards put in place to limit impairments to independence and objectivity. Safeguards may include delegating the audit of any such activity to an appropriate independent "deputy" or commissioning an independent third party (such as another local authority or a contractor) who will then report directly to those charged with governance.
37. Where Internal Audit staff are required to undertake non-audit duties, the Audit Manager will make it clear that those audit staff are not fulfilling those duties as Internal Auditors. The Audit Manager will ensure that within the service there remains sufficient impartiality to enable the actions and activities of those Internal Audit staff to be subject to audit by those independent from the activity.
38. Internal Auditors are not permitted to assess specific operations for which they were previously responsible for a period of at least 12 months.
39. If any member of the Internal Audit Service, or any individual or organisation engaged to act on its behalf considers that there is, or is perceived to be a conflict of interest, this must be declared to the Audit Manager, who will direct alternative and independent resources to the audit. If the Audit Manager finds himself in that position, he must declare this in writing to the Senior Leadership Team and another independent person or body will be appointed to fulfil this role.

Management and Internal Audit

40. It is the responsibility of Management to establish systems of internal control to ensure that activities are conducted in a secure and well-ordered manner. Internal Audit is one element of the control environment, but its existence does not relieve Management of its responsibility for maintaining effective risk management, control and governance processes.

Relationships with Elected Members and Reporting

41. The Audit Manager must establish and maintain good working relationships and channels of communication with Members. This should be achieved by regularly attending Audit and Standards Committee meetings and responding to any issues raised by Councillors, especially those who are members of the Audit and Standards Committee.
42. The Audit Manager will report periodically to Senior Management and the Board in accordance with the Standards. The programme of planned reports for a calendar year is shown below.

March	Quarterly Report on Internal Audit Activity Q3
March	Internal Audit Plan for forthcoming financial year
March	Annual Review of the Effectiveness of Internal Audit
June	Annual Report on Internal Audit Activity and Opinion on the Control Environment
September	Quarterly Report on Internal Audit Activity Q1
December	Quarterly Report on Internal Audit Activity Q2

43. Internal Audit aims to apply appropriate levels of transparency in reporting on work undertaken and recommendations for improvement. Reporting arrangements are designed to clearly show the standards and controls which services are measured against and the Auditor’s opinion on whether these have been met as well as applicable conclusions, recommendations and action plans. Reports deliberately do not include operational detail which might contain personal or commercially sensitive data.

Review of This Charter

44. This Charter will be reviewed and updated as necessary, and in any event, at least once every 3 years.

Date of next scheduled review: March 2025

Gary Angell
 Audit Manager
 November 2022

Rother District Council

Report to:	Audit and Standards Committee
Date:	5 December 2022
Title:	Revised Anti-Fraud and Corruption Framework
Report of:	Gary Angell, Audit Manager
Purpose of Report:	To update the Anti-Fraud and Corruption Framework to reflect recent changes.
Officer	
Recommendation(s):	Recommendation to COUNCIL: That the revised Anti-Fraud and Corruption Framework be approved and adopted.

Introduction

1. The Council is firmly opposed to fraud and corruption of any kind and has a suite of policies and procedures which it uses to promote a culture of openness, honesty and opposition to fraud. These documents form part of the Council's Anti-Fraud and Corruption Framework and were last approved at full Council in December 2019 (Minute C19/62).
2. The Framework has now been reviewed and updated. Members are asked to consider the proposed changes and recommend them for approval by full Council.

The Framework

3. The Anti-Fraud and Corruption Framework is made up of five separate but related documents, namely:
 - Anti-Fraud and Corruption Strategy
 - Fraud Response Plan
 - Anti-Bribery Policy
 - Anti-Money Laundering Policy
 - Whistleblowing Policy
4. These documents are designed (1) to encourage fraud deterrence and prevention, (2) raise awareness of fraud and corruption and promote their detection, and (3) to provide guidance on how concerns should be reported and how they will be dealt with.

Proposed Changes

5. The revised Anti-Fraud and Corruption Framework is attached in the Appendix to this report.
6. All of the proposed changes are cosmetic in nature (e.g. updating the names of post holders and job titles to reflect organisational change). The Whistleblowing Policy also now includes a named contact for our External Auditor as

recommended in the Government Response to the review of Local Government Ethical Standards which was reported to this Committee in June 2022 (Recommendation 23).

Conclusion

- Members are asked to review and agree the revised Anti-Fraud and Corruption Framework and recommend it for approval by full Council.

Risk Management

- A clear Anti-Fraud and Corruption Strategy and strong guidance helps to minimise the risks to the authority and its staff and Members and helps to maintain standards in public life. There are significant personal, corporate and reputational risks arising from the failure to report which are outlined in the Appendix to this report.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	External Consultation	No
Environmental	No	Access to Information	No
Risk Management	Yes	Exempt from publication	No

Chief Executive:	Malcolm Johnston
Report Contact Officer:	Gary Angell, Audit Manager
e-mail address:	gary.angell@rother.gov.uk
Appendices:	Revised Anti-Fraud and Corruption Framework
Relevant Previous Minutes:	AS19/21 & C19/62 AS22/08 Anti-Fraud and Corruption Framework 2019 Government Response to the review of Local Government Ethical Standards
Background Papers:	None.
Reference Documents:	None.



Anti-Fraud and Corruption Framework

Contents

- Anti-Fraud and Corruption Strategy
- Fraud Response Plan
- Anti-Bribery Policy
- Anti-Money Laundering Policy
- Whistleblowing Policy

Anti-Fraud and Corruption Strategy



1.0 Introduction

Rother District Council aims to provide quality services that are accessible to all sections of the community and delivered fairly and efficiently. The Council is firmly opposed to fraud and corruption of any kind and will take prompt and decisive action to deal equally with perpetrators from inside and outside the Council. The community and our customers have a right to expect the highest possible standards of honesty and integrity from the Council, its officers and the individual Members elected to represent them, and that the actions of those persons are free of fraud and corruption. Equally, the Council expects all individuals and organisations with which it conducts business to act with integrity and without thought or actions involving fraud and corruption.

Like all local authorities, Rother District Council operates within a statutory framework which governs the behaviour of elected Members and officers, in addition to which, it has a well-established framework of guidance on best practice which is laid down in its Financial Procedure Rules, Procurement Procedure Rules, Delegations to Officers, staff Conditions of Service and the Members' Code of Conduct. The reference to 'Members' within this document includes both Members and co-opted Members (if any).

The aim of this document is that it should be a policy statement of the Council's strategy for combating and dealing with fraud and corruption both within and against the authority. As such, it provides an overview of the key principles to be observed by Members and officers. It does not seek, however, to detail the specific requirements which are contained in the Constitution, Members' Code of Conduct and the Conditions of Service, and thus avoids the potential for conflicting advice from different documents. Additionally, nothing in this document shall preclude the Monitoring Officer and Section 151 Officer from fulfilling their statutory responsibilities.

2.0 Anti-Fraud and Corruption Framework

To demonstrate its commitment to the prevention and detection of fraud the Council has devised an Anti-Fraud and Corruption Framework.

The Anti-Fraud and Corruption Framework is made up five separate but related documents, and this strategy is the highest level document within the Framework. The other documents are the Fraud Response Plan, the Anti-Bribery Policy, the Anti-Money Laundering Policy, and the Whistleblowing Policy.

Each document identifies whether it should be linked to or considered in conjunction with any other corporate document. There is a separate strategy for dealing with Benefit Fraud, therefore frauds by benefit claimants are not covered by this strategy.

The Anti-Fraud and Corruption Framework is designed to:

- encourage fraud deterrence and prevention
- raise awareness of fraud, bribery and corruption and promote their detection
- provide guidance on how concerns should be reported and how they will be dealt with.

3.0 Culture

The Council's elected Members (Councillors) and officers (staff) play an important role in creating and maintaining a culture of openness, honesty and opposition to fraud and corruption. The Council expects Members and officers at all levels to lead by example in ensuring adherence to legal requirements, rules, procedures and practices and to carry out their duties in accordance with the seven principles of public life (i.e. selflessness, integrity, objectivity, accountability, openness, honesty and leadership).

Councillors, officers and members of the public are all important elements in the stance against fraud and corruption and are positively encouraged to raise any concerns they may have on these issues which impact on Council activities. The Council will ensure that any allegations received in any way, including by anonymous letters or telephone calls, will be taken seriously and investigated in an appropriate manner.

The Council will deal firmly with those who defraud or attempt to defraud the Council or who are corrupt or where there has been financial malpractice.

When fraud or corruption has occurred due to a breakdown in the Council's systems or procedures, it is the responsibility of management to ensure that appropriate improvements in systems of control are implemented to prevent a recurrence. This should be done in consultation with the Audit Manager who will review the control procedures to ensure that the opportunity to repeat the fraud is minimised.

4.0 Prevention

4.1 The Role of the Section 151 Officer

The Chief Finance Officer (Section 151 Officer) is responsible for the proper administration of the authority's financial affairs, as defined by Section 151 of the Local Government Act 1972. The Council's Financial Procedure Rules state that the Chief Finance Officer is responsible for:

- the proper administration of the authority's financial affairs
- setting and monitoring compliance with financial management standards
- advising on the corporate financial position and on the key financial controls necessary to secure sound financial management
- providing financial information
- preparing the revenue budget and capital programme
- Treasury Management

Section 114 of the Local Government Finance Act 1988 requires the Chief Finance Officer to report to the full Council, Cabinet and the External Auditor if the authority or one of its officers:

- has made, or is about to make, a decision which involves incurring unlawful expenditure
- has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the authority
- is about to make an unlawful entry in the authority's accounts.

4.2 *The Role of the Monitoring Officer*

The Deputy Chief Executive is the 'Monitoring Officer' in accordance with section 5 (1) of the Local Government and Housing Act 1989. It is the responsibility of the designated Monitoring Officer to maintain an up-to-date version of the Constitution and ensure that it is widely available for consultation by Members, officers and the public. The role also contributes to the corporate governance of the Council, in particular, through the provision of professional legal and ethical advice.

The Monitoring Officer shall, under section 5 (2) of the Local Government and Housing Act 1989, make a report to the Cabinet and Council where it appears to them that the Cabinet or Council and/or officers appointed by them:

- has made or is about to make a decision which contravenes any enactment, or rule of law
- has made or is about to make a decision that would give rise to maladministration or injustice as is mentioned in Part III of the Local Government Act 1974.

4.3 *The Role of Management*

The Chief Executive, Deputy Chief Executive, Director – Place and Climate Change, Chief Finance Officer, Heads of Service and other service managers are responsible for maintaining internal control systems and ensuring that the Council's resources and activities are properly applied in the manner intended. Management, with the assistance of Internal Audit, are responsible for identifying the risks to which systems and procedures are exposed and developing and maintaining effective controls to prevent and detect fraud. They must ensure that controls are complied with and relevant training is provided for all employees.

Management are also responsible for the communication and implementation of the Anti-Fraud and Corruption Framework and ensuring that their employees are aware of staff policies and procedures, the Council's Constitution, Financial Procedure Rules and that the requirements of each are being met in their everyday business activities. In addition, managers must make their employees aware of the requirements of the Council's Conditions of Service through the induction process.

Management should create an environment in which their staff feel able to approach them with any concerns they may have about suspected irregularities. Where they are unsure of the procedures, they must refer to the information included within the Fraud Response Plan and Whistleblowing Policy.

4.4 *The Role of Employees*

Individual officers are responsible for their own conduct and for contributing towards the safeguarding of corporate standards. Each employee is governed in their work by the Council's Constitution, Financial Procedure Rules, Conditions of Service and other policies on conduct. These are available on the Council's intranet (Teams); employees must be aware of and abide by these policies. Employees are responsible for ensuring that they follow the instructions as detailed within policies and procedures, or provided by management, particularly in relation to income and expenditure, and the security of assets.

A key preventative measure in dealing with fraud and corruption is to use effective checks at the recruitment stage to establish, as far as possible, the honesty and integrity of potential employees, whether for permanent, temporary or casual posts. The Council has a formal recruitment procedure, which contains appropriate safeguards on matters such as written references and verifying qualifications held. A standard criminal background check in the form of a self-declaration is also undertaken and Disclosure and Barring Service (DBS) checks made where appropriate. Where contractors provide a service and employ their own staff, confirmation should be required that the above procedures are part of the contractor's recruitment process and have been undertaken.

Employees are expected to be aware of the possibility that fraud, corruption and theft may exist in the workplace, and they are required to make themselves familiar with and comply with the Council's Anti-Fraud and Corruption Framework. Employees must be aware of procedures to be followed if they suspect that fraudulent or corrupt acts have been committed.

4.5 *The Role of Elected Members*

Elected Members are each responsible for their own conduct and contributing towards the safeguarding of corporate standards. As elected representatives, all Members have a duty to protect the Council and public money from any acts of fraud, bribery and corruption. This is done through a framework which includes the Anti-Fraud and Corruption Strategy, compliance with the Members' Code of Conduct and compliance with the Council's Constitution. Conduct and ethical matters are specifically brought to the attention of Members during induction and include the declaration and registration of interests. The Monitoring Officer advises Members of new legislative or procedural requirements.

4.6 *Conflicts of Interest*

Both Members and officers must ensure that they avoid situations where there is potential for a conflict of interest (e.g. when undertaking external tendering of services, internal tendering, planning and land issues). Effective role separation will ensure decisions made are seen to be based upon impartial advice and avoid questions about improper disclosure of confidential information. Declaration of interests should be recorded in accordance with the Code of Conduct and Constitution.

4.7 *Internal Control Systems*

Management is required to establish and maintain systems of internal control which should prevent and detect fraud and corruption. However, internal controls are only effective if they are properly executed and it is management's responsibility to ensure that the controls are properly applied so that the risk of fraud is minimised. Controls should therefore be regularly reviewed to ensure they remain appropriate and effective. The Internal and External Auditors assist management in this task by independently monitoring the existence, effectiveness and appropriateness of these controls.

The Council also expects its partners to have adequate controls in place to minimise fraud.

4.8 *Internal Audit*

Internal Audit plays a vital preventative role in trying to ensure that systems and procedures are in place to prevent and deter fraud and corruption. Under the Accounts and Audit Regulations 2015 and its own professional standards, it has a duty to provide an independent and objective opinion on the Council's control environment. As part of this duty of care, Internal Audit will ordinarily investigate all cases of suspected financial irregularity, fraud or corruption (except for benefit fraud) in accordance with established procedures and relevant regulations. However, the responsibility for investigating may lie with one of our local authority partners in certain circumstances – see *4.10 Joint Working*.

4.9 *External Audit*

External Audit is an essential safeguard of the stewardship of public money. It is not the External Auditor's function to prevent fraud and irregularities, but the integrity of public funds is at all times a matter of general concern. External Auditors are always alert to the possibility of fraud and irregularity and will act without undue delay if grounds for suspicion come to their notice. The External Auditor has a responsibility to review the Council's arrangements for preventing and detecting fraud and irregularities, and arrangements designed to limit the opportunity for corruption.

4.10 *Joint Working*

Where fraud or corruption is suspected in an area of joint working with other local authorities (including shared services and joint projects) it will be the responsibility of the lead authority to investigate. Any such concerns regarding Rother District Council led activities should therefore be reported to the relevant Head of Service/service manager and/or the Audit Manager in the first instance to agree the way forward. All other cases should be reported to, and investigated by, the lead authority, and Rother District Council informed of the outcome (where appropriate). The Audit Manager may also act as go-between if the person raising the concern does not wish to contact the partner authority direct.

4.11 Working with Others

Arrangements are in place, and continue to develop, to encourage the exchange of information with other organisations in respect of fraudulent and corrupt activities. These organisations include:

- Police
- Department for Work and Pensions
- HM Revenue and Customs
- Other outside agencies
- Suppliers and contractors

Where appropriate, the Council will also participate in data matching exercises and will share information using legislation or legal gateways available to us and our partners. For example, the Cabinet Office uses a Code of Data Matching Practice for its National Fraud Initiative (NFI), which is recognised by the Information Commissioner as complying with Data Protection legislation.

The Council will make full use of its statutory powers to obtain information and will utilise the services of the National Anti-Fraud Network (NAFN) to support such information gathering.

5.0 Detection and Investigation

In preventing and deterring fraud the Council is committed to maintaining a culture which will not tolerate fraud, bribery and corruption and will deal swiftly and firmly with any persons who defraud or attempt to defraud the Council, or who are corrupt. Disciplinary action and prosecution will be invoked whenever fraud or corruption is found. Additional information detailing the raising, investigation and resolution of concerns can be found within the Fraud Response Plan and the Whistleblowing Policy.

All elected Members and employees have a vital role in the detection of fraud and corruption and must be vigilant against the possibility of fraudulent and corrupt activity. A confidential whistleblowing procedure has therefore been established to encourage anyone who wishes to raise concerns about such behaviour to do so with confidence.

Internal Audit also assists management in fulfilling their responsibility for the detection of fraud and corruption and may detect fraud or corruption as a result of work undertaken.

Any investigation undertaken by Internal Audit, or other appropriate officers, must comply with codes of practice and other regulated powers. All relevant interviews and gathering of evidence must be conducted in accordance with the Police and Criminal Evidence Act 1984 (PACE), the Regulation of Investigatory Powers Act 2000 (RIPA), the Human Rights Act 1998, the Criminal Procedure and Investigations Act 1996 and the Investigatory Powers Act 2016 to ensure that all evidence remains admissible in a court of law. The objective of any investigation will be to establish whether there is evidence that fraud or malpractice has occurred and to collate sufficient, relevant and reliable evidence to support a complaint to the Police and allow disciplinary action and/or legal action to take place.

Where financial impropriety is discovered, the Council's presumption is that the Police will be called in. The Crown Prosecution Service determines whether a prosecution will be pursued. The final decision whether to refer a case to the Police rests with the Chief Executive in consultation with Human Resources. Referral to the Police will not prohibit action under the Council's Disciplinary Procedures.

External Audit also has powers to independently investigate fraud and corruption, and the Council can use their services for this purpose too. Any cases of fraud or corruption over £10,000 must be reported to External Audit.

Investigations should not be undertaken without appropriate knowledge of relevant legislation, and the Audit Manager should be notified of all suspected occurrences, as detailed within the Fraud Response Plan.

6.0 Training and Awareness

The Council recognises that the continuing success of its Anti-Fraud and Corruption Framework is largely dependent on the awareness of staff and Members throughout the Council. Managers must ensure that all staff receive training in fraud awareness and are made aware of the Anti-Fraud and Corruption Framework. The level and extent of this will depend on the work that individual employees carry out. When employees are an integral part of the control framework, it will be necessary for them to be regularly reminded of fraud issues. In other cases it may be sufficient to include information in an induction pack or to refer them to key policies and procedures on the Council's intranet (Teams). The Audit Manager should be consulted as necessary to provide advice on this and refresher training will be provided as and when required. The Council is also committed to providing suitable training, where necessary, for staff that are involved in investigating fraud and corruption.

Employees, Councillors and members of the public also need to be kept informed about how they can notify the Council if they think something is wrong. The Whistleblowing Policy details the methods available for raising concerns.

7.0 Conclusion and Review

This Strategy highlights the policies and procedures which the Council has put in place to assist in the prevention, detection and investigation of fraud and corruption.

Having established a strategy for dealing with fraud and corruption, the Council will ensure that these procedures continue to contribute to a strong control environment and good corporate governance within the authority, and that the arrangements remain appropriate and adequate for the prevention and detection of fraud and corruption.

Regular review of the Anti-Fraud and Corruption Framework will be undertaken by the Audit Manager so that it remains current and effective.

Version Control

Version 5 – November 2022

Fraud Response Plan



1.0 Introduction

Rother District Council is committed to the highest possible standards of openness, probity and accountability in all its affairs. It promotes a culture of honesty and will not tolerate fraud and corruption in the administration of its responsibilities.

This Fraud Response Plan forms part of the Council's Anti-Fraud and Corruption Framework and details how suspected instances of fraud and corruption can be reported, and how investigations into suspicions will be conducted and concluded.

2.0 Objectives and Scope

The purpose of this Fraud Response Plan is to reinforce the Council's approach to fraud by setting out the ways in which concerns about suspected fraud or corruption can be raised and to establish a protocol for investigating and responding to any such events. The reference to 'Members' within this document includes both Members and co-opted Members (if any).

The objectives of the Fraud Response Plan are to ensure that timely and effective action can be taken to:

- prevent further losses of funds or other assets where fraud has occurred and to maximise recovery of losses;
- minimise the effect of a fraud or corrupt act by taking appropriate and timely action at the earliest opportunity;
- ensure there is a clear understanding over the process and responsibilities for investigating suspected fraud or corruption;
- minimise the risk of inappropriate action or disclosure taking place which would compromise an investigation;
- identify the perpetrators and maximise the success of any disciplinary/legal action taken;
- ensure there is substance and evidence to support any allegation against an employee before that employee is subject to disciplinary action;
- minimise any adverse publicity for the Council, suffered as a result of fraud;
- identify any lessons which can develop future fraud management and prevention; minimise any adverse impacts on the business of the Council.

This document applies to all Members, employees and volunteers and should be applicable to third parties such as agency staff, contractors, suppliers and partners (including shared service providers) as appropriate.

3.0 Definition of Fraud and Corruption

Fraud is defined as ‘the intentional distortion of financial statements or other records by persons internal or external to the authority, which is carried out to conceal the misappropriation of assets or otherwise for gain, or to mislead or misrepresent’.

Corruption is defined as ‘the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person; or the failure to disclose an interest in order to enjoy financial or other pecuniary gain’.

4.0 Types of Fraud and Corruption

In addition to the obvious frauds involving theft of assets or the misappropriation of funds, the following are examples of the types of activity that may also be regarded as fraud or corruption:

- Manipulation or misreporting of financial information
- Misuse of the Council’s assets, including cash, stock and equipment
- Deception (e.g. misrepresentation of qualifications to obtain employment)
- Offering or accepting bribes or inducements from third parties
- Conspiracy to breach laws or regulations
- Fraudulent completion of official documents (e.g. VAT receipts)
- Time recording fraud
- Theft of intellectual property (e.g. unauthorised use of a brand name/logo, theft of customer data or product design)
- False mileage/expenses claims
- Influencing procurement/planning/licensing decisions for personal gain (or for the benefit of family or friends)

Note - This list is not exhaustive.

5.0 What should an employee or Member do if they suspect fraud or corruption?

It is the responsibility of all staff and Members to report fraud whenever they come across it within their work or in connection with their duties. Ignoring such acts is not acceptable. A confidential reporting procedure has therefore been established to encourage and enable staff and Members to raise serious concerns internally rather than overlooking the problem or informing the media or other external bodies. The reporting process is explained in more detail in the Council’s [Whistleblowing Policy](#).

Employees should initially raise any suspicions of fraud or corruption with their line manager or Head of Service. Concerns may be raised verbally or in writing. The officer receiving the allegation is then required to inform the Audit Manager and the Section 151 Officer and/or Monitoring Officer as appropriate, and agree any immediate action required to minimise any serious danger or risk.

Note - Any suspicions of fraud or corruption in areas of joint working (including shared services and joint projects) which are not managed by Rother District Council should be raised with the relevant lead authority.

Employees who suspect their line manager or Head of Service may be involved or do not think it appropriate to discuss the concern with them should contact one of the Designated Officers listed below. Members should approach one of the Designated Officers directly.

The nature and seriousness of the incident should be considered before deciding which of the Designated Officers to contact.

- Malcolm Johnston, Chief Executive
- Lorna Ford, Deputy Chief Executive (Monitoring Officer)
- Ben Hook, Director - Place and Climate Change
- Antony Baden, Chief Finance Officer (Section 151 Officer)
- Gary Angell, Audit Manager

Alternatively, concerns may be reported to the Audit Manager direct by either completing an online [Whistleblowing Form](#), sending an email to audit@rother.gov.uk or by ringing the Council's confidential Fraud Hotline on **01424 787799**. These reports may be submitted anonymously if you prefer not to be identified.

You should never confront the suspected individual or act in a manner which might draw their attention to your suspicions. At the earliest opportunity you should clearly record all the activities you have witnessed and information you have received or are aware of. It is important to record as much information as possible to inform any subsequent management assessment or investigation, including dates, times and sequences of events.

The Council will support anyone who raises a genuine concern in good faith, even if it later turns out to be mistaken. While all suspected incidents of fraud and corruption should be reported, employees should note that disciplinary action will be taken if frivolous or malicious allegations are found to have been made.

6.0 What should managers do when suspected fraud or corruption is reported to them by a member of staff?

- Listen to the concerns of your staff and treat every report you receive seriously and sensitively.
- Make sure that all staff concerned are given a fair hearing. You should reassure your staff that they will not suffer because they have told you of their suspicions.
- Get as much information as possible from the member of staff, write any information down and agree the content with the individual raising the concern. Do not interfere with any evidence and make sure it is kept in a safe place.
- Differentiate between a performance issue, non-compliance and a fraud or corrupt act. If either of the former two, then consult the Conditions of Service or Human Resources. If there is a possibility of fraud or corruption, then:

- Do not investigate the matter yourself (or access the suspect's computer) in an attempt to determine the facts as this could prejudice any criminal investigation
- Report the matter immediately to the Audit Manager
- If unsure, please contact the Audit Manager for advice or a confidential discussion.

Following discussion with the Audit Manager, a decision will be made regarding the way forward. Managers are the responsible officers, although Internal Audit must be notified in all cases of suspected fraud or irregularity. In certain cases, Internal Audit will assume full responsibility for the fraud response. If the complaint involves a Member, then the Monitoring Officer should also be notified.

7.0 What should auditors do if they suspect fraud or corruption?

If in the course of their duties a member of the Internal Audit Team suspects fraud or corruption they should cease work on the assignment immediately and report it to the Audit Manager. If the Audit Manager is unavailable then the Deputy Chief Executive should be informed.

8.0 What should a member of the public do if they suspect fraud or corruption?

Members of the public who suspect fraud or corruption are encouraged to contact the Council.

If the issue relates to a Council employee or an individual working on behalf of the Council (including agency workers and contractors), the matter should be reported to the Audit Manager by either completing the online [Whistleblowing Form](#), sending an email to audit@rother.gov.uk or by ringing the Council's confidential Fraud Hotline on **01424 787799**. Complaints about the conduct of Members should be reported to the Monitoring Officer in the first instance.

If **benefit fraud** is suspected, we encourage you to report the matter either by completing the online [Report a fraud form](#) or by ringing the Benefit Fraud Hotline on **01424 787737**.

9.0 Investigating Allegations of Irregularities

The objective of the investigation is to:

- establish whether there is evidence that a fraud has occurred;
- collect sufficient evidence to support any complaint to the Police; and
- provide sufficient evidence for disciplinary or legal action.

When a suspected fraud or corrupt act is reported, the relevant senior officer will initially discuss the matter with the Audit Manager. If the evidence indicates potential wrongdoing, the Audit Manager will then undertake a detailed investigation keeping both Human Resources and the Chief Executive informed about progress as it proceeds.

All investigations will be conducted in accordance with the relevant Council policies and procedures and where appropriate criminal legislation.

All interviews with staff will be conducted in line with the Council's disciplinary procedures. Should there be a possibility that the investigation could lead to a criminal prosecution then all relevant interviews must be carried out by the Police or by an officer suitably trained in the Police and Criminal Evidence Act 1984 (PACE) to ensure that all evidence gathered remains admissible in a court of law.

Due consideration must also be given the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA), the Human Rights Act 1998 and the Investigatory Powers Act 2016 when undertaking any investigation.

Any conversations you have with, or information that you provide to the Audit Manager or other investigating officers will remain confidential. You should remember, however, that you may be required to provide a signed written statement should the case result in a criminal prosecution.

10.0 Preservation of Evidence

When the initial enquiry has established that further investigation is required, it is essential that all available evidence relating to the fraud be preserved without alerting the alleged perpetrator to your suspicions.

Original documentation is the best form of evidence and original documents should be obtained and retained if possible. They should not be marked in any way and handled as little as possible. Photocopies should be marked, dated and certified as copies. When evidence is held on a computer, the computer should be secured, and the ICT Manager and the Audit Manager consulted about the most appropriate way of retrieving the data in accordance with the rules of court evidence. Under no circumstances should the computer be viewed by anyone who is not appropriately trained. (Note - Even switching it on may corrupt or destroy important evidence.) Other forms of evidence may include cash or stock, which should be counted and agreed in the presence of the responsible officer. If the person responsible for assets is not available, two people should record the amount held and sign a statement confirming it.

Whenever a person is suspended from work for suspected fraud or corruption they should be asked to remove all personal belongings from their desk/cupboard and be informed that the desk/cupboard may be examined. Please note also:

- (1) the suspended person must be supervised when removing their personal belongings to prevent the removal of any evidence
- (2) any door entry card must also be surrendered and/or access revoked
- (3) access to files and/or computer records should be suspended immediately (and any files or ICT/mobile phone equipment which contain such data recovered)
- (4) Internet and/or telephone links should be terminated immediately, if not before the suspension is actioned.

11.0 Actions Following the Completion of an Investigation

Once the investigation has been completed, a written report will be issued to senior management stating the facts discovered by the investigation. A recommendation will also be made as to the appropriate course of action to be followed. This can include a disciplinary hearing, criminal proceedings or no further action.

If the fraud was significant (e.g. high value, senior officer, Member, high reputational impact) the findings will also be discussed in detail with the relevant Head of Service/service manager to enable sufficient action to be taken.

The decision whether to take disciplinary action/criminal proceedings rests with the Chief Executive after receiving advice from Human Resources.

12.0 Follow Up

Following all investigations into suspected irregularities, work will be undertaken with the relevant service area(s) in order to address any weaknesses in procedures identified during the investigation. It is the responsibility of management at all levels to ensure that effective systems of internal control are established and operating to minimise the potential for fraud and corruption. Where fraud has been identified, management, in consultation with the Audit Manager, should review the control procedures to ensure that the opportunity to repeat the fraud is minimised.

Where appropriate, the Council will liaise with the Police if sufficient evidence exists for prosecution. This approach may be adopted in conjunction with the Council's own disciplinary procedures.

Whenever fraud has been proved, the Council will make every effort to recover the losses. The method used will vary depending on the type of loss and the regulations and powers available. All means of recovery including recovery under social security legislation, attachment of earnings, civil court proceedings and criminal court compensation will be used as appropriate to the offence.

13.0 Publicity

The Senior Leadership Team, with the agreement of the Leader of the Council, will deal with the Press and publicity in all matters regarding fraud and corruption. Where appropriate the details of all successful prosecutions for fraud may be released to the media through the Communications Team. Staff and Managers must not directly disclose to the Press the details of any cases suspected or under investigation. Disclosure of details to the media without express authority would be regarded as a disciplinary matter. The aim is to publicise the Council's intolerance of fraud or corruption both within the Council and by users of its services. It also serves to publicise our successes against those who would perpetrate such fraud or corruption against the Council.

Version Control

Version 5 – November 2022

Anti-Bribery Policy



1.0 Policy Statement

Bribery is a criminal offence. We do not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor do we or will we accept bribes or improper inducements.

To use a third party as a conduit to channel bribes to others is a criminal offence. We do not, and will not, engage indirectly in or otherwise encourage bribery.

We are committed to the prevention, deterrence and detection of bribery. We have zero-tolerance of bribery. We aim to maintain anti-bribery compliance as “business as usual”, rather than a one-off exercise.

2.0 Objective of this policy

This policy provides a coherent and consistent framework to enable the Council’s employees and Members to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable employees and Members to identify and effectively report a potential breach.

We require that all personnel, including those permanently employed, temporary agency staff and contractors:

- act honestly and with integrity at all times and to safeguard the Council’s resources for which they are responsible
- comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the Council operates.

3.0 Scope of this policy

This policy applies to all Council activities. For partners (including shared service providers), joint ventures, contractors and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

The responsibility to control the risk of bribery occurring resides at all levels of the Council.

This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, agents, Members, volunteers and consultants.

4.0 This Council’s commitment to action

This Council commits to:

- Setting out a clear anti-bribery policy and keeping it up-to-date.
- Making all employees and Members aware of their responsibilities to adhere strictly to this policy at all times.
- Making training available to permit recognition and avoidance of bribery.
- Encouraging employees, Members and others to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately.
- Rigorously investigating instances of alleged bribery and assisting Police and other appropriate authorities in any resultant prosecution.
- Taking firm and vigorous action against any individual(s) involved in bribery.
- Include appropriate clauses in contracts to prevent bribery.

5.0 The Bribery Act 2010

5.1 Definition of Bribery

Broadly, the Act defines bribery as giving or receiving a financial or other advantage in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith.

Bribery does not have to involve cash or an actual payment exchanging hands and can take many forms such as a gift, lavish treatment during a business trip or tickets to an event.

5.2 Offences

There are four key offences under the Act:

- | | |
|---|---|
| <ul style="list-style-type: none"> - bribery of another person (section 1) - accepting a bribe (section 2) - bribing a foreign official (section 6) - failure by a commercial organisation to prevent bribery - a corporate offence (section 7) | <p>Note - It is still an offence for someone to offer a bribe even if it is not accepted.</p> |
|---|---|

A *commercial organisation* will have a defence to the corporate offence of failure to prevent bribery if it can show that it had in place *adequate procedures* designed to prevent bribery by or of persons associated with the organisation.

5.3 Is the Council a "commercial organisation"?

Yes. The guidance states that a "commercial organisation" is any body formed in the United Kingdom and "...it does not matter if it pursues primarily charitable or educational aims or purely public functions. It will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made."

5.4 What are “adequate procedures”?

Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. Adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is for individual organisations to determine what procedures to adopt based on the six principles set out below.

5.5 Six principles for bribery prevention

- **Proportionate procedures** – An organisation’s procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation’s activities. They are also clear, practical, accessible, effectively implemented and enforced.
- **Top level commitment** – The top-level management is committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.
- **Risk assessment** – The organisation assesses the nature and extent of its exposure to potential external or internal risks of bribery on its behalf by persons associated with it. This includes financial risks but also other risks such as reputational damage.
- **Due diligence** – The organisation applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.
- **Communication (including training)** – The organisation ensures that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.
- **Monitoring and review** - The organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

The Council is committed to proportional implementation of these principles.

5.6 Penalties

An individual guilty of an offence under sections 1, 2 or 6 is liable:

- On conviction in a Magistrates’ Court, to imprisonment for a maximum term of 12 months (six months in Northern Ireland), or to a fine not exceeding £5,000, or to both
- On conviction in a Crown Court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both

Organisations are also liable for these fines and if guilty of an offence under section 7 are liable to an unlimited fine.

6.0 Bribery is not tolerated

It is unacceptable to:

- give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given;
- give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure;
- accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them;
- accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided in return;
- retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy;
- engage in activity in breach of this policy.

7.0 Facilitation payments

Facilitation payments are not tolerated and are illegal. Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions.

8.0 Gifts and hospitality

This policy is not meant to change the requirements of our gifts and hospitality guidance, which can be found within the Conditions of Service. In summary, all gifts and hospitality offered to or received by officers should be reported to their line manager and recorded in a Register, regardless of whether they are accepted or not.

9.0 Public contracts and bribery offences

Under the Public Contracts Regulations 2015, a Bribery Act conviction in respect of active bribery (section 1), passive bribery (section 2) or bribery of foreign public officials (section 6) gives rise to a mandatory exclusion from participation in public tenders. The offence of 'failure of commercial organisations to prevent bribery' (section 7) will not trigger mandatory exclusion but may give rise to grounds in support of a discretionary exclusion.

10.0. Staff responsibilities

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the Council or under its control. All staff are required to avoid activity that breaches this policy.

You must:

- ensure that you read, understand and comply with this policy
- raise concerns as soon as possible if you believe or suspect that a conflict with this policy has occurred or may occur in the future.

As well as the possibility of civil and criminal prosecution, staff who breach this policy will face disciplinary action, which could result in dismissal for gross misconduct.

11.0 Raising a concern

The Council is committed to ensuring that all of us have a safe, reliable, and confidential way of reporting any suspicious activity. We want each and every member of staff to know how they can raise concerns.

If you have a concern regarding a suspected instance of bribery or corruption, please speak up – your information and assistance will help. The sooner you act, the sooner it can be resolved.

There are multiple channels to help you raise concerns. Please refer to the Council's [Whistleblowing Policy](#) and determine the most appropriate course of action. Preferably the disclosure will be made and resolved internally. However, where internal disclosure proves inappropriate, concerns can be raised via your trade union, professional organisation or regulatory body (e.g. External Auditor). Raising concerns in these ways may be more likely to be considered reasonable than making disclosures publicly (e.g. to the media).

In the event that an incident of bribery, corruption, or wrongdoing is reported, we will act as soon as possible to evaluate the situation. We have clearly defined procedures for investigating fraud, misconduct and non-compliance issues and these will be followed in any investigation of this kind.

We are committed to ensuring nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because of reporting a concern in good faith.

If you have any questions about these procedures, please contact Gary Angell, Audit Manager either by email (gary.angell@rother.gov.uk) or by telephone (01424 787709).

Version Control

Version 5 – November 2022

Anti-Money Laundering Policy



1.0 Introduction

The Proceeds of Crime Act 2002 and the Terrorism Act 2000 place certain obligations on the Council and its employees regarding suspected money laundering.

Any employee could potentially be caught by the money laundering provisions if they suspect money laundering and either become involved with it in some way and/or do nothing about it. Failure to report these suspicions is a criminal offence.

This policy has therefore been adopted in order to provide guidance and introduce safeguards to help staff identify and report instances where money laundering is suspected.

2.0 Objectives and Scope

The policy sets out the procedures which must be followed to enable employees to comply with their legal obligations.

The aim of this policy is to prevent criminal activity through money laundering by:

- raising awareness of the legal and regulatory requirements affecting both individuals and the Council as a whole; and
- helping employees to correctly respond to any concerns they may have about money laundering in the course of their dealings for the Council.

This policy applies to all employees, whether permanent or temporary.

3.0 What is Money Laundering?

3.1 *Definition*

Money laundering is generally understood to mean the process by which illegally acquired funds (i.e. from crime or terrorism) are moved through financial systems so that they appear to come from a legitimate source. However, the term also covers a range of activities, which do not necessarily need to involve money.

3.2 *Legislation*

The main requirements of the UK anti-money laundering regime are set out in the:

- Proceeds of Crime Act 2002 (as amended by the Serious Organised Crime and Police Act 2005 and further amended by the Serious Crime Act 2015);
- Terrorism Act 2000 (as amended by the Anti-Terrorism, Crime and Security Act 2001 and the Terrorism Act 2006 and further amended by the Money Laundering Regulations 2007).
- Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (which supersede the Money Laundering Regulations 2007, 2012 and 2015);

Whilst local authorities are not subject to the requirements of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, guidance from the Chartered Institute of Public Finance & Accountancy (CIPFA) indicates that they should still comply with the underlying spirit of the legislation and regulations by taking all reasonable steps to minimise the likelihood of money laundering, including putting in place proper policies and procedures.

3.3 *Legislative Requirements*

The main requirements of the legislation are:

- To nominate a Money Laundering Reporting Officer (MLRO)
- Maintain client identification procedures in certain circumstances
- Implement a procedure to enable the reporting of suspicions of money laundering
- Maintain record keeping procedures

3.4 *Offences*

Money laundering offences under the Proceeds of Crime Act 2002 include:

- concealing, disguising, converting, transferring criminal property or removing it from the UK (section 327);
- entering into or becoming concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person (section 328); and
- acquiring, using or possessing criminal property (section 329).

There are also two secondary offences:

- failure to disclose any of the three primary offences above; and
- “tipping off” whereby somebody informs a person or persons who are, or who are suspected of being involved in money laundering, in such a way as to reduce the likelihood of their being investigated or prejudicing an investigation.

The Terrorism Act 2000 includes the money laundering offence of becoming concerned in an arrangement relating to the retention or control of property likely to be used for the purposes of terrorism or resulting from acts of terrorism.

3.5 Penalties

The consequences for staff committing an offence are potentially very serious. Money laundering offences may be tried at a Magistrates' Court or in the Crown Court, depending on the severity of the suspected offence. Trials at the former can attract fines of up to £5,000, up to six months in prison or both. In a Crown Court, fines are unlimited, and sentences from two to fourteen years may be imposed.

4.0 The Money Laundering Reporting Officer (MLRO)

The officer nominated to receive disclosures about money laundering activity within the Council is Antony Baden, the Chief Finance Officer (Section 151 Officer).

5.0 How do I know when money laundering is taking place?

It is not possible to give a definitive list of ways in which to identify money laundering or how to decide whether to make a report to the MLRO. The following are types of risk factors which may, either alone or cumulatively, suggest possible money laundering activity:

- Payment of a substantial sum in cash (i.e. over £10,000),
- Payment of lower cash sums where cash is not the normal means of payment
- A new customer or use of new/shell companies
- A secretive customer – e.g. refuses to provide requested information without a reasonable explanation
- Concerns about the honesty, integrity, identity or location of a customer
- Illogical third party transaction such as unnecessary routing or receipt of funds from third parties or through third party accounts
- Involvement of an unconnected third party without logical reason or explanation
- Overpayments by a customer or payments of deposits subsequently requested back
- Absence of an obvious legitimate source of funds
- Movement of funds overseas, particularly to a higher risk country or tax haven
- Unusual transactions or ways of conducting business, without reasonable explanation
- A transaction without obvious legitimate purpose or which appears uneconomic, inefficient or irrational
- The cancellation or reversal of an earlier transaction
- Requests for release of customer account details other than in the normal course of business
- Transactions at substantially above or below fair market values
- Poor business records or internal accounting controls
- A previous transaction for the same customer which has been, or should have been, reported to the MLRO
- Lack of 'traceability' of persons involved
- Individuals and companies that are insolvent yet have funds

Facts that tend to suggest that something odd is happening may be sufficient for a reasonable suspicion of money laundering to arise.

6.0 What should I do if I suspect a case of money laundering?

Anyone who knows or suspects money laundering activity is either taking, or has taken, place **must** inform the MLRO immediately, either in person or in writing by completing Part A of the disclosure form included at the end of the policy.

If you do not disclose information immediately, then you may be liable to criminal prosecution.

If you are concerned that your involvement in the transaction would amount to a prohibited act under sections 327 to 329 of the Proceeds of Crime Act 2002, then your report must include all relevant details, as you will need consent from the National Crime Agency, via the MLRO, to take any further part in the transaction.

You should make it clear in the report if such consent is required and clarify whether there are any deadlines for giving such consent – e.g. a completion date or court deadline.

You must follow any subsequent directions from the MLRO but must not make any further enquiries into the matter or any related transactions.

You must not disclose or indicate your suspicions to the person suspected of the money laundering as this could be regarded as “tipping off” which is itself an offence. Similarly, you must not discuss the matter with others or note on the file that a report has been made to the MLRO in case this results in the suspect becoming aware of the situation.

7.0 What will the MLRO do?

The MLRO will consider the report and any other available internal information he thinks relevant. This may include:

- reviewing other transaction patterns and volumes
- the length of any business relationship involved
- the number of any one-off transactions and linked one-off transactions
- any identification evidence held

The MLRO will undertake any other enquiries deemed appropriate and will ensure that all available information is taken into account before deciding whether a report to the National Crime Agency (NCA) is required. When making further enquiries the MLRO must avoid any action which could tip off those involved, or which could give the appearance of tipping them off.

The MLRO may also need to discuss the report with you.

If the MLRO concludes that there is actual money laundering taking place, or that there are reasonable grounds to suspect so, he will record his reasoning in Part B of the disclosure form (included at the end of this policy) and must submit a Suspicious Activity Report (SAR) to the NCA immediately.

If consent is required to proceed with transactions for any prohibited acts under sections 327 to 329 of the Proceeds of Crime Act 2002, this can also be requested when the MLRO submits his report.

The quickest and easiest way to submit a SAR is online via the NCA website www.nationalcrimeagency.gov.uk (registration required). This provides instant confirmation and a reference number once the report has been received.

The system does not retain a file copy for your use, so the MLRO should keep a copy of the report.

The MLRO will commit a criminal offence if he knows or suspects, or has reasonable grounds to do so, that another person is engaged in money laundering and he does not disclose this to the NCA as soon as practicable.

Where the MLRO concludes that there are no reasonable grounds to suspect money laundering, or he suspects money laundering but has a good reason for non-disclosure, then this must be noted accordingly on Part B of the disclosure form and consent given in writing for any ongoing or imminent transactions to proceed. The MLRO should consult with the Council's Legal Services before reaching a non-disclosure decision. If in any doubt, the MLRO should always disclose

8.0 Customer Due Diligence

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 require 'relevant persons' (i.e. credit and financial institutions, audit and accountants firms, tax advisers and insolvency practitioners, independent legal professionals, trust or company service providers, estate agents, high value dealers and casinos) to perform additional checks when undertaking certain activities in the course of their business. This process is known as customer due diligence.

Customer due diligence measures consist of identifying and verifying the identity of the customer, and any beneficial owner of the customer, and obtaining information on the purpose and intended nature of the business relationship. Regulated businesses are required to undertake these measures where they establish a business relationship, carry out an occasional transaction over 15,000 euros, suspect money laundering or terrorist financing or doubt the accuracy of customer identification information.

The regulations concerning customer due diligence are detailed and complicated, and there is no legal obligation for local authorities to carry them out. However, Council employees are encouraged to adopt the regulations where practical to minimise the likelihood of money laundering.

The basic identity check for **existing business customers** is to verify that signed, written instructions on the organisation's headed paper were obtained at the outset of the business relationship.

For **new business customers**, the Council can exercise due diligence by conducting some simple enquiries such as:

- checking with the customer's website to confirm their business address
- conducting an online search via Companies House to confirm the nature and business of the customer and confirm the identities of any directors
- attending to the client at their business address
- seeking evidence of the key contact's personal identity (e.g. passport, photo ID card or driving licence) and position within the organisation.

If satisfactory evidence of identity is not obtained at the outset then the business relationship (or one-off transaction) should not proceed any further and you should report the matter immediately to the MLRO.

For further information on the customer due diligence requirements visit the money laundering regulations guidance on the GOV.UK website and go to the following location: <https://www.gov.uk/guidance/money-laundering-regulations-your-responsibilities>

9.0 Other Customer Checks

Staff dealing with transactions which involve income should be suspicious of any unusual payments received from private individuals – e.g. in respect of council tax, benefit overpayments, sundry debtors, etc. In particular, the following practices may indicate potential money laundering:

- large payments of cash
- substantial overpayments of debts followed by a request for a refund (especially if this happens more than once)
- substantial overpayments by credit or debit card where a cheque refund is requested (also a potential indication of credit card fraud)

Suggested checks include:

- Assess whether the size/method of payment seems reasonable given the nature and value of the debt.
- Check whether substantial overpayments are due to a genuine mistake – e.g. the customer used the wrong payee details, accidentally made a duplicate payment or entered too many zeros on an Internet payment. (This excuse becomes less credible if the customer then repeats this behaviour once the matter is corrected.)
- Consider whether the customer requesting a refund is attempting to introduce intermediaries to either protect their identity or hide their involvement. (The safest policy is to always refund the originating card/bank account).

Preferably, all of the above checks should be carried out based on information already received rather than through further contact with the customer. Care must be taken to avoid “tipping off” the customer.

If you are still suspicious about the transaction after carrying out the above checks, you should report the matter immediately to the MLRO.

10.0 Record Keeping

All disclosure reports referred to the MLRO and reports subsequently made to NCA must be retained by the MLRO in a confidential file kept securely for that purpose, for a minimum of five years.

Where operational, evidence of customer due diligence checks and details of all relevant business transactions carried out for those customers must also be kept for at least five years.

11.0 Guidance and Training

In support of this policy, the Council will:

- make all staff aware of the requirements and obligations placed on the Council and on themselves as individuals by the Anti-Money Laundering legislation; and
- provide targeted training to those officers considered most likely to encounter money laundering.

Note - It is the duty of officers to report all suspicious transactions whether they have received their training or not.

12.0 Conclusion

Given the nature of the Council's services and for whom these services are provided, instances of suspected money laundering are unlikely to arise very often, if at all. However, we must be mindful of the legislative requirements, as failure to comply may render individuals liable to prosecution.

The Council believes that this policy represents a proportionate response to the level of risk faced.

Version Control

Version 5 – November 2022

Money Laundering Activity – Disclosure Form (Part A)

To report suspected money laundering, complete this form and pass it to the Money Laundering Reporting Officer (MLRO)

From:	Name:	
	Job Title:	
	Service:	
	Tel/Ext No:	

Date by which a response is required:

Details of suspected offence:

Name(s) and address(es) of person(s)/company/public body involved and nature of business if a company/public body:

Nature, value and timing of activity involved (e.g. what, when, where, how):

(Continue on a separate sheet if necessary)

Nature of suspicions regarding such activity:

(Continue on a separate sheet if necessary)

Has any investigation been undertaken (as far as you are aware)? *(Delete as appropriate)*

Yes/No

If yes, please include details below:

Have you discussed your suspicions with anyone else? *(Delete as appropriate)*

Yes/No

If yes, please specify below, explaining why such discussion was necessary:

Please set out below any other information you feel is relevant:

Signed:

Dated:

Please do not discuss the content of this report with anyone you believe may be involved in the suspected money laundering activity described. To do so may constitute a “tipping off” offence under the Proceeds of Crime Act 2002 which carries a maximum penalty of five years imprisonment.

Money Laundering Activity – Disclosure Form (Part B)

This part of the form must be completed by the MLRO

SECTION 1 - ACKNOWLEDGEMENT AND REVIEW

Date report received by MLRO:	
Date receipt acknowledged:	

Consideration of disclosure to the National Crime Agency (NCA):

Action taken to review the report:

Outcome of consideration of disclosure:

Are there reasonable grounds for suspecting money laundering activity?

If there are reasonable grounds for suspicion, will a Suspicious Activity Report (SAR) be made to the NCA? (Delete as appropriate)	Yes/No
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If yes, please complete Section 2. If no, go straight to Section 3.

SECTION 2 - DETAILS OF LIAISON WITH THE NCA

Date of Report:		Reference number:	
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Notice Period:	From:	To:
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Note - The NCA has 7 working days starting the first working day after the consent request is made to refuse continuation of the activity. If no refusal has been received, consent is deemed to have been given and the activity may continue.

Moratorium Period:	From:	To:
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Note - If consent is refused during the notice period, a further 31 days starting with the day on which consent is refused must elapse before the activity may continue. In the absence of any action to restrain the activity by law enforcement during the moratorium period the activity may continue.

Is consent required from the NCA to any ongoing or imminent transactions which would otherwise be prohibited acts? (Delete as appropriate)	Yes/No
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Record of consent given by the NCA

Date:		Time:	
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SECTION 3 - NON-DISCLOSURE

If there are reasonable grounds to suspect money laundering, but you do not intend to report the matter to the NCA, please set out below the reason(s) for non-disclosure:
Note - Include details of any discussions with other Officers (e.g. Legal Services) together with their name(s) and the advice given.

SECTION 4 - RECORD OF CONSENT GIVEN BY MLRO

Consent given by MLRO for the employee:	Date
To proceed with the transaction	
For any prohibited act transactions to proceed	

SECTION 5 - ANY OTHER RELEVANT INFORMATION

Signed: Dated:

Print Name:

THIS REPORT MUST BE RETAINED FOR AT LEAST FIVE YEARS

Whistleblowing Policy



1.0 Introduction

Rother District Council is committed to the highest possible standards of corporate governance including openness, probity and accountability in the delivery of its services to the people who live and work within the District. It is also committed to the prevention, deterrence, detection and investigation of all forms of fraud, theft or corruption. The authority has put in place a range of rules, regulations, procedures and codes of practice to deliver this commitment, but unfortunately malpractice and/or wrongdoing may still occur.

The Council is determined that the culture and tone of the organisation shall be one of honesty and strong opposition to fraud, corruption or any form of malpractice. There is an expectation and requirement that all individuals and organisations associated in whatever way with the Council will act with integrity and that employees, at all levels, will lead by example in these matters.

The Council's employees are an important element in detecting and preventing fraud, corruption or any form of malpractice. Employees are often the first to realise that there may be something wrong within the Council. However, they may be reluctant to speak up if their concerns are no more than a suspicion or if they feel that raising the matter would be disloyal to their colleagues or the Council.

The Council is not prepared to tolerate malpractice or fraudulent activity. Employees, and others that we deal with, are therefore positively encouraged to raise any concerns associated with the Council's activity at an early stage. This policy has been introduced to enable you to do this in confidence, without fear of victimisation, subsequent discrimination or disadvantage. The policy also encourages you to raise concerns within the Council (or if you feel that this is not appropriate then externally) rather than overlooking a problem.

2.0 Objectives and Scope

The objectives of this policy are to:

- encourage individuals to feel confident in raising serious concerns;
- provide a channel to raise those concerns (on an anonymous basis if necessary) and to have confidence that those concerns will be properly dealt with; and
- reassure staff that they will be protected from possible reprisals or victimisation if they have made the disclosure in good faith.

This policy applies to all employees of the Council (including agency staff, trainees and volunteers) as well as independent consultants, contractors, suppliers, elected Members (Councillors) and members of the public.

3.0 Definition of Whistleblowing

The term 'whistleblowing' in this policy refers to any confidential disclosure of suspected wrongdoing in respect of anyone working for or associated with the Council.

4.0 Reportable Behaviour

Any serious concerns about a Council's activity or the conduct of any of its officers, Members or agents should be reported using this procedure.

Potential areas of concerns may include:

- Any unlawful act, whether criminal (e.g. theft) or a breach of the civil law (e.g. breach of contract).
- Maladministration (e.g. unjustified delay, incompetence, neglectful advice).
- Breach of any statutory Code of Practice.
- Health and safety risks, including risks to the public as well as other employees.
- The unauthorised use of public funds (e.g. expenditure for an improper purpose).
- Fraud and corruption (e.g. to solicit or receive any gift/reward as a bribe).
- Breach of the Conditions of Service or Members' Code of Conduct
- Any unethical conduct.

Note - This list is not exhaustive.

This policy does not cover employees lodging grievances about their employment, or the public complaining about services that they have or have not received. There are separate Council procedures in place detailing the course of action for those circumstances.

5.0 Safeguards

5.1 *Prevention of Harassment or Victimisation*

The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect you when you raise a concern in good faith. Any member of staff found to be victimising you will be considered to be committing a serious disciplinary offence.

If you experience any such pressure after raising a legitimate concern, tell someone in authority.

5.2 Confidentiality

Whilst the Council gives an assurance that it will not tolerate the harassment or victimisation of anyone raising a genuine concern, it recognises that nonetheless an individual may want to raise a concern in confidence under this policy. The Council will take steps to maintain your confidentiality throughout the process. However, it is possible that we will be unable to resolve the concern raised without revealing your identity (e.g. because your evidence is needed in court) but if this occurs we will discuss with you in advance how we can proceed.

5.3 Anonymous Allegations

This policy encourages you to put your name to any allegation you make. Concerns expressed anonymously are much less powerful, but they will still be considered for investigation at the discretion of the Council.

5.4 Untrue Allegations

No action will be taken against staff who make allegations in good faith if they are not confirmed by the investigation. Employees who report legitimate concerns under this policy are merely fulfilling their duty to the Council and will not therefore be at risk of losing their job/position or suffering any form of retribution. However, if an individual is found to make malicious or vexatious allegations it may be considered appropriate to take disciplinary action.

6.0 How to Raise a Concern

Any concerns that you have may be raised verbally or in writing. Concerns are better raised in writing giving the background, history and reason for the concern together with names, dates, places and as much information as possible. If you do not feel able to put your concern in writing then you can telephone or meet the officer you intend reporting to. Where appropriate, arrangements can be made for disclosures outside normal working hours.

Remember – The earlier you express your concern the easier it will be to take action. If in doubt, raise it!

The reporting route for concerns will depend on the seriousness and sensitivity of the issues and who is thought to be involved.

If you are a member of staff, agency staff, self-employed worker, contractor, or volunteer you can raise your concern or suspicion in the first instance with your line manager or Head of Service. (The officer receiving the allegation is then required to inform the Audit Manager and the Section 151 Officer and/or Monitoring Officer.) If this is not appropriate you can raise the issue directly with **one** of the following Designated Officers.

- Malcolm Johnston, Chief Executive
- Lorna Ford, Deputy Chief Executive (Monitoring Officer)
- Ben Hook, Director - Place and Climate Change
- Antony Baden, Chief Finance Officer (Section 151 Officer)
- Gary Angell, Audit Manager

If you are a Councillor you should approach one of the above Designated Officers directly.

Your choice of Delegated Officer should take into account the nature and seriousness of your concern and whether they might already be involved in the issue.

Note - Regardless of the route you take, the Designated Officer will be required to inform at least one member of the Senior Leadership Team (Chief Executive, Deputy Chief Executive, Director - Place and Climate Change or Chief Finance Officer) if your concern leads to a formal investigation. However, only one of these officers will usually be consulted in relation to the detail of your concern. This is to ensure that any further escalation or complaint about the conduct of an investigation may be dealt with by a different officer.

If you are a member of the public then you are encouraged to raise any matters of concern directly with the Council by contacting the Audit Manager. This may be done using one of the following methods:

- **Online:** By completing a [Whistleblowing Form](#)
- **By email:** By sending a message to audit@rother.gov.uk
- **By telephone:** By calling the Fraud Hotline on **01424 787799**
- **By post:** By writing to the Audit Manager at Rother District Council, Town Hall, Bexhill-on-Sea, East Sussex, TN39 3JX.

All Whistleblowing Forms and email messages are delivered direct to the Audit Manager and are only accessible by this officer. Similarly, all calls (and voicemail messages) received on the Fraud Hotline can only be answered (or accessed in the case of a message) by the Audit Manager.

All information received by the Audit Manager will be handled in the strictest confidence, but you may still raise your concerns anonymously if you prefer.

In the event that the Audit Manager is absent for any sustained period of time (e.g. annual leave of more than 72 hours) then one of the Designated Officers listed above will be given secure access to any messages received.

Note - The Internal Audit Team are automatically sent an email alert whenever a whistleblowing referral is received meaning that they would know when to arrange for a Designated Officer to be given secure access. However, at no point are they able to view the content of the message themselves.

7.0 How the Council Will Respond

The action taken by the Council will depend on the nature of the concern. The matters raised may:

- Be investigated internally by Management or Internal Audit
- Be referred to the Monitoring Officer
- Be referred to the Police
- Be referred to the External Auditor
- Form the subject of an independent inquiry.

You are encouraged to put your name to concerns. All cases reported will be considered, but concerns expressed anonymously are more difficult to action and investigate effectively. The Council will not expect you to prove that your concern is true, but you will need to demonstrate to the person contacted that there are reasonable grounds for you to raise the issue.

The following factors will be taken into account when establishing the scope and depth of any investigation:

- The seriousness of the issues raised
- The credibility of the concern
- The likelihood of confirming the allegation from other sources and information

In order to protect individuals and the Council, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations that fall within the scope of specific procedures, for example, discrimination issues, will normally be referred for consideration under those procedures. Some concerns may be resolved by agreed action without the need for investigation.

All serious concerns will be investigated quickly using the most appropriate procedure. It is essential that your allegation is heard by an officer who is impartial and capable of taking an independent view on the concerns raised.

The amount of contact between you and the Designated Officer considering your concerns will depend on the nature of the matters raised, the potential difficulties involved, and the clarity of the information provided. If necessary, further information will be sought from you in a discreet manner. You have the right to be accompanied by a friend, colleague (not involved in the area of work to which the concern relates), trade union or professional association representative when attending any meetings.

The Designated Officer will respond to you within 10 working days acknowledging that your concern has been received and where required arrange an initial, confidential meeting to obtain any further information. This is to enable the Designated Officer to decide upon the best course of action but should not be construed as an acceptance or rejection of the concern.

The Designated Officer will then decide whether an investigation is appropriate or not and, if so, what form it should take.

Owing to the variety of factors to take into account it is only possible to offer an estimate of the timescale for investigation, but the Designated Officer will keep you informed of progress – subject to legal constraints and matters of confidentiality.

8.0 How the Matter Can Be Taken Further

This policy is intended to provide a channel for you to raise concerns within the Council. If you are not satisfied with the outcome of an investigation, and you feel it is right to take the matter outside the Council, the following are possible contact points:

- Relevant professional, government or regulatory bodies such as the Health and Safety Executive, Environment Agency, Financial Conduct Authority, HM Revenue and Customs, or HM Treasury
- Local Government Ombudsman
- External Auditor – Contact: Darren J. Wells (Director), Grant Thornton UK LLP, Telephone: 01293 554120, Email: Darren.J.Wells@uk.gt.com
- Police
- Recognised trade unions

In instances where staff decide to take the matter outside the Council they must always ensure that, in the first instance, the Council has been given an opportunity to fully investigate the issues raised. You will also need to ensure that confidential information is not disclosed unless relevant to your concern.

9.0 Independent Advice

9.1 *Council Employees*

The Council recognises that employees may wish to seek advice and be represented by their trade union when using the provisions of this policy and acknowledges and endorses the role trade union representatives play in this area.

It is worth remembering that your trade union, professional organisation or regulatory body can play a valuable role in assisting you raise your concerns under this policy.

9.2 *Members of the Public*

Organisations that may be able to provide specific advice, in addition to those listed in paragraph 8.0, include:

- Citizens Advice
- Protect (formerly Public Concern at Work)

Protect is an independent charity that provides free advice to anyone who wishes to raise concerns about fraud or other serious malpractice. It can be contacted by telephone on 020 3117 2520, by email at whistle@protect-advice.org.uk or by completing an [online form](#)

10.0 Relevant Legislation

The Public Interest Disclosure Act 1998 aims to protect whistleblowers from victimisation and dismissal, where they raise genuine concerns about a range of misconduct and malpractice. It covers virtually all employees in the public, private and voluntary sectors, and certain other workers, including agency staff, homeworkers, trainees, contractors, and all professionals in the NHS. The

usual employment law restrictions on minimum qualifying period and age do not apply.

A worker will be protected if the disclosure is made in good faith and is about:

- a criminal act
- a failure to comply with a legal obligation
- miscarriage of justice
- danger to health and safety
- any damage to the environment
- an attempt to cover up any of these.

The Act extends protection given to health and safety representatives to individuals who raise genuine concerns about health, safety or environmental risks. (The Employment Rights Act 1996 already gives some legal protection to employees who take action over, or raise concerns about, health and safety at work.)

Where a whistleblower is victimised following a protected disclosure, they can take a claim to an employment tribunal for compensation. If a whistleblower is dismissed, they can apply for an interim order to keep their job, pending a full hearing.

Version Control

Version 5 – November 2022

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Rother District Council

Report to:	Audit and Standards
Date:	5 December 2022
Title:	Procurement and Capital Programme Audits - Management Responses Update
Report of:	Antony Baden – Chief Finance Officer
Purpose of Report:	To update Members on progress made regarding the implementation of the Procurement and Capital Programme internal audit recommendations.
Officer	
Recommendation(s):	It be RESOLVED : That the report be noted.

Introduction

1. At its meeting held on 26 September 2022, this Committee considered a report from the Council's Internal Audit Manager, which raised issues around the Procurement and Capital Programme audits. Both audits provided only limited assurance on overall governance arrangements.
2. As a result, Members requested an update on the management responses to the issues raised in the audits. This includes progress on the implementation of audit recommendations (Minute AS22/30 refers).
3. The Chief Finance Officer is the strategic lead Procurement Officer for the Council and many of the issues raised in **both** audit reports directly impact on the work of the Finance department. However, Members will note that ultimately it is the responsibility of all officers across the Council to implement the recommendations contained in both audit reports.
4. The current position regarding the implementation of each audit recommendation is analysed in Appendix A.

Procurement audit - Management Responses update

5. Members will note that most of the recommendations in this audit have already been implemented. It should also be noted that Procurement training has taken place since the audit report was issued in June 2022, notably in the Corporate Programme and Projects team, and this will strengthen the actions set out in Appendix A. Furthermore, discussions are currently taking place with the East Sussex Procurement Hub with a view to rolling out further training across the Council.

Capital Programme audit - Management Responses update

6. To date, half of the recommendations in this audit have already been implemented, including the high-risk recommendation concerning the monitoring of the Capital Programme by the Finance department and budget

holders. Progress on the remaining ones are explained in more detail in paragraphs 7 to 10 below.

7. **Recommendation 1.2** – since the audit, the quality of capital programme reporting has been greatly enhanced with additional information such as slippage and total project costs now added to reports. Much of the additional information suggested by this recommendation is already included in the Corporate Programme Board documents and will be combined into the capital programme reports in due course.
8. **Recommendation 4.1 (1)** – As mentioned in paragraph 7 above, information on project slippage is now incorporated into capital programme reports and further work will be undertaken to enhance this information during the current financial year.
9. **Recommendation 4.1 (2)** – As mentioned in paragraphs 7 and 8 above, some improvements have been made in the reporting of project slippage and this will be further developed during 2022/23.
10. **Recommendation 4.2** – The Chief Finance Officer reports capital programme spending to the Senior Leadership Team (SLT) each month. Furthermore, as part of the Medium-Term Financial Planning and budget setting processes, the Council’s capital programme is also being reviewed with SLT. The revised programme will be reported to Cabinet in February 2023, by which time this recommendation will have been fully implemented.

Conclusion

11. Most of the audit recommendations have already been implemented by senior management. With respect to the outstanding recommendations, work is progressing well and will be completed during the current financial year.
12. SLT will monitor progress on all recommendations, including those that have already been implemented and those which are still work in progress.

Financial Implications

13. As detailed in the report.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	Consultation	No
Environmental	No	Access to Information	No
Risk Management	No	Exempt from publication	No

Chief Executive:	Malcolm Johnston
Report Contact Officer:	Antony Baden
e-mail address:	antony.baden@rother.gov.uk
Appendices:	Appendix A – Procurement and Capital Programme Audit Recommendations – Progress Update
Relevant Previous Minutes:	Minute AS22/30
Background Papers:	None

Reference Documents:	None
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AUDIT AND STANDARDS COMMITTEE

WORK PROGRAMME 2022 – 2023	
DATE OF COMMITTEE	SUBJECT
Monday 5 December 2022	<p>Part A – Standards Reports</p> <ul style="list-style-type: none"> • Local Government and Social Care Ombudsman Complaints Monitoring • Code of Conduct Complaints Monitoring and other Standards Matters • Code of Conduct • Review of the Arrangements for Dealing with Member Complaints, Investigations Procedure and Hearings Procedure <p>Part B – Audit Reports</p> <ul style="list-style-type: none"> • Proposed Amendments to the Constitution • Internal Audit Report to 30 September 2022 • Revised Anti-Fraud and Corruption Framework • Procurement and Capital Programme Audits Update and Management Responses • Outcome of the review and position appraisal of Rother DC Housing Company Ltd
Monday 20 March 2023	<p>Part A – Standards Reports (none scheduled)</p> <p>Part B – Audit Reports</p> <ul style="list-style-type: none"> • Grant Thornton – Audit Progress Report and Sector Update • Grant Thornton – External Audit Plan 2022/23 • Internal Audit Report to 31 December 2022 • Procurement and Capital Programme Audits Update and Management Responses • Internal Audit Plan 2023/24 • Review of Internal Audit 2022/23 • Annual Property Investment Update • Treasury Management Update – Quarter 3 • Accounting Policies 2022/23 • Risk Management Update

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