

AUDIT AND GOVERNANCE COMMITTEE

Date: Wednesday 6 December 2017
Time: 5.30 pm
Venue: Rennes Room, Civic Centre, Paris Street, Exeter

Members are invited to attend the above meeting to consider the items of business.

If you have an enquiry regarding any items on this agenda, please contact Mark Devin, Democratic Services Officer on 01392 265477.

Entry to the Civic Centre can be gained through the Customer Services Centre, Paris Street.

Membership -

Councillors Vizard (Chair), Wood (Deputy Chair), Baldwin, Harvey, Mrs Henson, Keen, Lamb, Musgrave, Sheldon and Warwick

Agenda

Part I: Items suggested for discussion with the press and public present

1 **Apologies**

To receive apologies for absence from Committee Members.

2 **Minutes**

To sign the minutes of the meeting held on 20th September 2017.

3 **Declaration of Interests**

Councillors are reminded of the need to declare any discloseable pecuniary interests that relate to business on the agenda and which have not already been included in the register of interests, before any discussion takes place on the item. Unless the interest is sensitive, you must also disclose the nature of the interest. In accordance with the Council's Code of Conduct, you must then leave the room and must not participate in any further discussion on the item. Councillors requiring clarification should seek the advice of the Monitoring Officer prior to the day of the meeting.

4 **Local Government (Access to Information) Act - Exclusion of Press and Public**

It is considered that the Committee would be unlikely to exclude the press and public during consideration of the items on this agenda, but if it should wish to do so, the following resolution should be passed:-

RECOMMENDED that, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting of the particular item(s)

on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in the relevant paragraphs of Part I of Schedule 12A of the Act.

- | | | |
|----------|---|--------------------|
| 5 | External Audit Technical Update
To consider the report of the Council's External Auditor. | (Pages 3 -
28) |
| 6 | Annual Audit Letter 2016/17
To consider the Annual Audit Letter from the Council's External Auditor KPMG. | (Pages 29
- 38) |
| 7 | Internal Audit Progress Report
To consider the report of the Audit Managers. | (Pages 39
- 54) |
| 8 | Report on Ombudsman Complaints
To consider the report of the Corporate Manager Executive Support Unit. | (Pages 55
- 62) |
| 9 | Disqualification Criteria for Councillors and Mayors
To consider the report of the City Solicitor and Head of HR. | (Pages 63
- 82) |

Date of Next Meeting

The next **Audit and Governance Committee** will be held on Wednesday 14 March 2018 at 5.30 pm

Find out more about Exeter City Council by looking at our website <http://www.exeter.gov.uk> . This will give you the dates of all future Committee meetings and tell you how you can ask a question at a Scrutiny Committee meeting. Alternatively, contact the Democratic Services Officer (Committees) on 01392 265107 for further information.

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Technical update

Exeter City Council

November 2017

Contents

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This report provides the Audit Committee with an overview on progress in delivering our responsibilities as your external auditors. The report also highlights the main technical issues which are currently having an impact in local government. If you require any additional information regarding the issues included within this report, please contact a member of the audit team. We have flagged the articles that we believe will have an impact at the Authority and given our perspective on the issue:

- High impact
- Medium impact
- Low impact
- For information

This report is addressed to the Authority and has been prepared for the sole use of the Authority. We take no responsibility to any member of staff acting in their individual capacities, or to third parties. We draw your attention to the Statement of Responsibilities of auditors and audited bodies, which is available on Public Sector Audit Appointment's website (www.psa.co.uk).

External auditors do not act as a substitute for the audited body's own responsibility for putting in place proper arrangements to ensure that public business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively. We are committed to providing you with a high quality service. If you have any concerns or are dissatisfied with any part of KPMG's work, in the first instance you should contact Darren Gilbert, the engagement lead to the Authority, who will try to resolve your complaint. If you are dissatisfied with your response please contact the national lead partner for all of KPMG's work under our contract with Public Sector Audit Appointments Limited, Andrew Sayers, by email to Andrew.Sayers@kpmg.co.uk. After this, if you are still dissatisfied with how your complaint has been handled you can access PSA's complaints procedure by emailing generalenquiries@psaa.co.uk by telephoning 020 7072 7445 or by writing to Public Sector Audit Appointments Limited, 3rd Floor, Local Government House, Smith Square, London, SW1P 3HZ.



External audit progress report

External audit progress report

This document provides the audit committee with a high level overview on progress in delivering our responsibilities as your external auditors.

At the end of each stage of the audit we issue certain deliverables, including reports and opinions. A summary of progress against these deliverable is provided in Appendix 1 of this report.

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Area of responsibility	Commentary
Financial statements	An unqualified opinion was issued on the financial statements on 20 September 2017 and reported through our ISA 260 at the last Audit Committee.
Value for Money	An 'except for' qualified Value for Money opinion was issued on 20 September 2017 and reported through our ISA 260 at the last Audit Committee.
Certification of claims and returns	The Housing Benefit certification work is currently underway. We anticipate reporting to DWP by the 29 November deadline. A verbal update will be provided to the Audit and Governance Committee.
	We have completed our work on the return for Pooling of Housing Capital Receipts with no issues noted. This was reported to DCLG on 3 November 2017.
Other work	There is no other work ongoing currently.
2017/18 Audit	We have confirmed fieldwork dates with the Authority for the 2017/18 audit cycle, and have also began planning discussions for the faster close requirements. We have met with the Finance team on the 22 November to discuss how the audit went and what learning points can be taken into next years audit.



KPMG Resources

Ready for General Data Protection Regulations (GDPR)?

The biggest change to rules governing data protection for more than 20 years comes into effect in May 2018, carrying fines of up to 4% of revenue or €20m for organisations that do not comply, whichever is higher. The European Privacy regulators have made it very clear they intend to use their new powers.

Managing data requires a careful strategy to ensure that it's reliable and that customers understand what you are doing with their personal information and where required that you have gained their consent. This will ensure the insights it delivers are actionable, and reduces the risk that organisations won't be perceived as intrusive as customers see more tailored services.

Based on KPMG's extensive experience in working with organisations across sectors and geographies on privacy matters, we recommend the following five step approach. This could be used specifically for the purposes of the GDPR or as a broader privacy strategy approach.

- 1) **Define your privacy strategy** – Defining your privacy strategy is the first step. Without it, you can't have a consistent and coherent approach. The strategy must be defined and articulated, and then presented to senior leadership for their endorsement. You need to get it on the decision maker's agenda fast. Our recent experience has shown that most organisations will need to put investment into a privacy improvement programme.
- 2) **Where are you now?** – In order to establish the size of the task ahead and what specific areas need addressing, you need to understand your organisation's current maturity. This is not a tick box exercise but a pragmatic, focused process to really understand the GDPR privacy risk exposures that exist across your organisation.
- 3) **Take a pragmatic approach** – You need to build a realistic plan which will help you manage your risk to an appropriate level, in line with your overall business strategy. This does not necessarily mean taking a leading position in every single respect – but a clear view of what success looks like for you.
- 4) **Coordinate and deliver** – Focusing on areas of greatest risk, you need to ensure that controls are embedded as part of day to day business operations. This will require coordination across the organisation. Make sure you have the right blend of input from legal, IT, HR and other functions and enough resources. Don't underestimate the level of effort – personal information is everywhere in your organisation.
- 5) **Embed into business as usual** – Complying with the GDPR is about defining, implementing and then sustaining compliant processes. Post 2018 you will be required to demonstrate, on an ongoing basis, how you collect, use, retain, disclose and destroy personal information in line with the GDPR requirements. This impacts everything you do relating to personal information and is therefore a significant transformational activity for your organisation going forwards.

More details, including in relation to the five step approach set out above, can be found at: www.kpmg.com/uk/privacyservices

Faster accounts close for Local Government

In February 2015 a new closedown timetable for Councils, Fire Authorities, Police Bodies and National Park Authorities was set out reducing both the time to prepare the accounts and complete the audit. As in prior years the Regulations retain the requirement for the draft accounts to be approved by the Responsible Finance Officer and sets out the period for the exercise of public rights.

The Benefits

The Government has been keen to improve transparency of local government financial reporting. Historically there has been a disconnect between budget monitoring carried out during the year and the annual accounts closedown process producing a set of statements that bear little resemblance to the reported budget position.

The Risks

Reducing the time taken to publish the financial statements presents a number of risks to authorities which will need to be addressed in order to facilitate successful faster closure. The Regulations set out the duties of the Responsible Financial Officer to have proper arrangements in place.

potential risks include:

- failure to deliver the draft and final statements within the deadlines;
- incomplete and inaccurate financial statements (e.g. due to risk of error from increased estimation);
- reputational damage; and
- diversion of resources from other key finance activities –leading to issues in other areas.

As well as compliance with the Regulations, failure would lead to potential qualification of the VFM opinion from external auditors and critical comments from national stakeholders.

Lessons from bodies already closing early

Experience elsewhere suggests there needs to be an early recognition of the additional work needed to develop the faster plan. Many Authorities have developed a project group of key senior finance officers and central and service finance office to develop the approach.

Resourcing is always recognised as an issue, but in the development of a plan, authorities need to ensure that accounts production is appropriately shared amongst staff resources, for instance, there is experience at smaller authorities that this is allocated to one person.

Fundamental to the development plan is ensuring that all contributors, including those outside of finance, are aware of the change and they are built into the project.

KPMG have produced a thought leadership document that covers the above in more detail. This is available from your audit team.

The route to digital business leadership

Whether disruptive technologies are viewed as a threat, an opportunity, or both, the need for digitally enabled business transformation is a survival issue for some and a strategic imperative for just about everyone else. But organizations are meeting with varying levels of success.

In this year's Harvey Nash / KPMG CIO Survey, we recognized that there was a group of respondents who are 'very effective' at using digital technologies to advance their business strategy. We have labelled these organizations 'Digital Leaders'.

Based on extensive analysis of the survey data, KPMG member firms' professional experience and conversations with clients, we have identified four key practices that set these 'digital leaders' apart from other organizations. The report describes each in more detail:

- Build on a stable and secure infrastructure
- Invest aggressively in agile and disruptive technologies
- Adept at aligning business and IT strategy
- Focused on innovation and growth

But how do you become a digital leader? KPMG's report sets out six steps that organizations can take to help close the gap, and move them down the road towards digital business leadership.

The full report can be accessed here: <https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2017/09/the-route-to-digital-business-leadership.pdf>



Technical developments

Local government finance settlement 2017-18

Level of impact: ● (For Information)	KPMG Perspective
<p>The Department for Communities and Local Government (DCLG) has published the final local government finance settlement for 2017/18. The settlement reflects comments received by DCLG in response to its consultation, with key features including:</p> <ul style="list-style-type: none">– confirmation of spending allocations for those authorities which have taken up the government’s four-year funding deal first set out in 2015;– details of council tax referendum thresholds, including the additional social care precept, and a 2% principle for all shire district councils, and for police and crime commissioners in the lowest quartile; and– the legislative framework for business rates reform underpinning the move towards 100% business rates retention. <p>For further information please see www.gov.uk/government/collections/final-local-government-finance-settlement-england-2017-to-2018</p>	<p>Committee members may want to be updated as to how this will impact on the medium term financial plans.</p>

Minimum Revenue Provision Consultation

Level of impact: ● (For Information)	KPMG Perspective
<p>The Prudential System is comprised of 4 statutory codes. The Department for Communities and Local Government is responsible for preparing the guidance on Local Authority Investments and the guidance on Minimum Revenue Provision.</p> <p>Over the past years the regulatory and economic environment has changed significantly and led the sector to consider more innovative types of investment activity. The government has also monitored changes in the practices used for calculating Minimum Revenue Provision.</p> <p>As a result the government proposes to update the guidance as part of the more general update of the statutory codes comprising the prudential framework</p> <p>Department for Communities and Local Government are consulting on the proposed framework</p> <p>This consultation seeks views on the proposals for updating the prudential framework and will last from 10 November 2017 and will conclude on 22 December 2017.</p> <p>The consultation and proposed framework can be found below.</p> <p>https://www.gov.uk/government/consultations/proposed-changes-to-the-prudential-framework-of-capital-finance</p>	<p>Committee members may want to ask officers how they propose to respond to the consultation and the potential impact to the medium term financial plans.</p>

Public Sector Internal Audit Standards (PSIAS)

Level of impact: ● (For Action)	KPMG Perspective
<p>The revised Public Sector Internal Audit Standards (PSIAS) came into force on 1 April 2017 and are included on the IASAB website (a CIPFA microsite – link below). These were agreed by the Relevant Internal Audit Standard Setters (RIASS) who are CIPFA in respect of local government bodies across the UK.</p> <p>The standards apply to local authorities and other local government bodies, including police and fire bodies, as well as government departments (including executive agencies and non-departmental public bodies) and Clinical Commissioning Groups and NHS trusts.</p> <p>The standards are based on the mandatory elements of the International Professional Practices Framework (IPPF) as follows:</p> <ul style="list-style-type: none"> – Definition of internal auditing. – Core principles for the professional practice of internal auditing. – Code of ethics. – International standards for the professional practice of internal auditing (which comprise statements, interpretations and a glossary). – Plus the mission of internal auditing. <p>In addition, the PSIAS include a small number of the UK public sector requirements, which indicate how internal auditors must implement the IPPF in the UK public sector including:</p> <ul style="list-style-type: none"> – conforming to the Code of Ethics. If individual internal auditors have membership of another professional body then he or she must also comply with the relevant requirements of that organisation; – having regard to the Committee on Standards of Public Life’s Seven Principles of Public Life; and – the requirement for the chief audit executive to deliver an annual internal audit opinion and report that can be used by the organisation to inform its governance statement. The annual internal audit opinion must conclude on the overall adequacy and effectiveness of the organisation’s framework of governance, risk management and control. The annual report must also include a statement on conformance with the Public Sector Internal Audit Standards and the results of the quality assurance and improvement programme. <p>The 2017 PSIAB standards can be found at www.iasab.org/standards</p>	<p>Committee members may wish to request assurance that the Internal Audit standards will be achieved.</p>

Local authority accounts: A guide to your rights

Level of impact: ● (For Information)

The NAO publishes a guide aimed at helping local people understand their rights to ask questions, inspect and object to local authority accounts. The updated publication, *Local authority accounts: A guide to your rights*, is available on the NAO website (at the link below).

The main changes to the guide are as follows:

- A change of title from *Council Accounts: A guide to your rights* to *Local authority accounts: A guide to your rights*, to reflect the fact that public rights apply to a wider selection of authorities than 'councils'.
- The guide contains a new Annex, which addresses issues specific to smaller authorities, such as exemption from limited assurance review, which comes into force from 2017-18 onwards.
- The guide clarifies that, while helpful to do so, it is not necessary for electors to identify an item of account in order for the objection to be eligible, particularly where they are raising issues in respect of governance, and/or are asking the auditor to issue a report in the public interest. Audit committee members are encouraged to read the guide, and to direct members of the public to in correspondence where this may be helpful.

The guide can be found at www.nao.org.uk/code-audit-practice/council-accounts-a-guide-to-your-rights/

Publication of 2017/18 work programme and scale of fees

Level of impact: ● (For Information)

Following consultation, Public Sector Audit Appointments Ltd (PSAA) has published the work programme and scale fees for the audit of the 2017/18 accounts of principal local government and police bodies.

There are no changes to the overall work programme for 2017/18. Scale fees will therefore also remain at the same level as the scale fees applicable for 2016/17. This retains the significant fee reductions of 55 per cent secured since 2012/13, and continues to protect audited bodies from cost of living increases with an overall real terms saving equivalent to 61 per cent.

The audit of the 2017/18 accounts is the final year for the current audit contracts, which were extended for one year under transitional arrangements made by the Department for Communities and Local Government. For audits of the accounts from 2018/19, the provisions of *the Local Audit and Accountability Act 2014* in relation to local appointment of auditors will apply. The Secretary of State for Communities and Local Government has specified PSAA as the appointing person for principal local government and police bodies, and, in accordance with the Act, PSAA will therefore appoint auditors and set scale audit fees for bodies that have opted into its national scheme.

During the course of 2017/18 PSAA plans to make a distribution of surplus funds to principal local government and police bodies. The distribution is made possible by the transfer of an element of the Audit Commission's retained earnings prior to its closure in March 2015 and by PSAA making further efficiencies since its establishment.

The work that auditors will carry out on the 2017/18 accounts will be completed based on the requirements set out in the *Local Audit and Accountability Act 2014* and under the *Code of Audit Practice* published by the National Audit Office.

The 2017/18 work programme documents and scale fees for individual audited bodies are now available on the PSAA website at www.psa.co.uk/audit-and-certification-fees/201718-work-programme-and-scales-of-fees/

Local Audit (public access to Documents) Act 2017

Level of impact: ● (For Information)

The *Local Audit (Public Access to Documents) Act 2017* (the Act) received royal assent on 27 April 2017. The Act extends rights of inspection under section 26 of the *Local Audit and Accountability Act 2014* to include journalists and citizen journalists.

The Act defines a journalist as 'any person who produces for publication journalistic material (whether paid to do so or otherwise).' Committee members will wish to note that while the Act extends rights of inspection, there are no changes in respect of auditors' additional powers and duties; the rights under the *Local Audit and Accountability Act 2014* to ask the auditor questions about the accounts, and to make an objection at audit, continue to be restricted to local government electors only.

Level of impact: ● (For Information)

Members will wish to be aware that CIPFA/LASAAC are consulting on the 2018/19 *Code of Practice on Local Authority Accounting in the United Kingdom*.

The consultation will close on 6 October 2017 with responses direct to CIPFA. The changes being consulted on are:

- IFRS 9 Financial Instruments;
- IFRS 15 Revenue from Contracts with Customers;
- narrow scope amendments to International Financial Reporting Standards;
- legislative and policy changes.

A copy of the consultation can be found at www.cipfa.org/policy-and-guidance/consultations/code-of-practice-on-local-authority-accounting-in-the-united-kingdom-2018-to-2019-invitation-to-comment The deadline to respond is 6 October 2017.

In addition, CIPFA is consulting on changes to both the prudential and treasury management codes. These codes have not been updated for some time and CIPFA recognises that they needed to be revised to take into consideration new patterns of local authority borrowing and investment activity.

The prudential code consultation can be found at www.cipfa.org/policy-and-guidance/consultations/consultation-on-proposed-changes-to-the-prudential-code and the treasury management code consultation at www.cipfa.org/policy-and-guidance/consultations/consultation-on-treasury-management-code

The closing date for responses for these consultations is the 30 September.

NAO Report – Progress in setting up combined authorities

Level of impact: ● (For Information)

In July, the NAO published its report on *Progress in setting up combined authorities* which concludes that for combined authorities to deliver real progress they will need to demonstrate that they can drive economic growth and contribute public sector reform.

These authorities have inherently complex structures and are not uniform. They vary in the extent of the devolution deals they have struck with government. The combined authority with the greatest degree of devolution, Greater Manchester, has now absorbed control over the office of the police and crime commissioner and fire and rescue services. Others are currently primarily focused on transport issues, as well as housing and regeneration.

The report highlights a number of risks including:

- local councillors will have limited capacity for the overview and scrutiny of combined authorities. Furthermore, in May 2017, six mayors were elected to combined authorities in England, with candidates having campaigned on manifestos which frequently made policy commitments beyond the current remits of these organisations. This raises the question of whether mayors can be credible local advocates if they only deal with the limited issues under the remit;
- a number of authorities have been unable to bring local authorities together to establish combined authorities, while areas with a long history of working together have often found it most straightforward to establish combined authorities;
- the capacity of most combined authorities is currently limited and the lack of geographical coherence between most combined authorities and other providers of public services could make it more problematic to devolve more public services in the future; and
- if the United Kingdom’s departure from the European Union (EU) results in reductions in regional funding, the economic regeneration role of combined authorities would become more pressing. Combined authorities are generally in areas which receive the most EU funding. The North West, for example, is scheduled to receive in excess of 1 billion euros in European Regional Development Funds, European Social Fund, and Youth Employment allocations between 2014 and 2020.

The report is available on the NAO website at www.nao.org.uk/report/progress-in-setting-up-combined-authorities/

PSAA's Value for Money tool

Level of impact: ● (For Information)

Public Sector Audit Appointments Ltd (PSAA) further updated their Value for Money Profiles tool (VFM Profiles) on 4 August 2017.

The VFM profiles have been updated with the latest available data for the following data sources:

- Alcohol related admissions to hospital (2015/16)
- Attainment by age 19 (2015/16)
- Claimant count (2017)
- Climate change statistics (2015)
- Collection rates for council tax and non-domestic rates (2016/17)
- Conception statistics (2015)
- Council tax demands and precepts statistics (2017/18)
- Delayed transfers of care (Q1 2017)
- Fire and rescue service statistics (2016)
- First time entrants into the youth justice system (2015/16)
- Fly tipping incidents and actions (2015/16)
- Fuel poverty (2015)
- Homelessness statistics (2016/17)
- Mid-year population estimates (2016)
- National road maintenance condition survey (2015/16)
- NHS health check data (2016/17)
- Pupil absence in schools (2015/16)
- School capacity (2016)
- Schools, pupils and their characteristics (2016/17)

The tool can be accessed through the PSAA website at http://vfm.psa.co.uk/nativeviewer.aspx?Report=/profiles/VFM_Landing

PSAA report on the results of auditors' work at Local Government bodies 2016-17

Level of impact: ● (For Information)

Public Sector Audit Appointments Ltd (PSAA) intends to publish a report on the results of auditors' work at local government bodies for 2016-17.

In December 2016, PSAA published its second report on the results of auditors' work at local government bodies covering the 2015-16 financial year.

PSAA is intending to publish a report on the results of auditors' work at principal local government bodies and small bodies for the 2016-17 audit year, covering the following:

- timing of issue of accounts opinions (early and late);
- non-standard accounts opinions;
- emphasis of matter and other matter paragraphs;
- non-standard conclusions on arrangements to secure VFM; and
- details of public interest reports and statutory recommendations issued since the previous report.

The report will include the names of individual principal bodies under each of the above categories, as appropriate, with a summary of all the principal bodies named in the report in an appendix at the end. PSAA is aiming to publish the report around mid-December 2017.

Information reported by auditors in the PSAA audit issues survey will be the primary source of information for the report.

Level of impact: ● (For Information)

The NAO has published a report on Homelessness which may be of interest to members in considering bodies' arrangements to secure value for money.

The report finds that homelessness has increased across all measures since 2010, with many local authorities now seeing it as a risk to their financial sustainability. It also finds that government has not evaluated the impact of its welfare reforms on homelessness, or the impact of the mitigations that it has put in place.

The report details the increase in statutory homelessness in England in recent years, and identifies the factors driving this. It notes that although the Department for Communities and Local Government (DCLG) is responsible for tackling homelessness, during its increase, DCLG took a light touch approach to working with local authorities. This contrasts with the more interventionist approach that it has taken during previous periods of high homelessness. Although DCLG requires each local authority to have a homelessness strategy, it does not monitor their content or their progress.

DCLG has supported new legislation that will increase the responsibilities of local authorities in preventing homelessness. The Homelessness Reduction Act 2017 aims to give local authorities more responsibility for preventing homelessness. DCLG expects that these responsibilities will lead to an increase in prevention cases and a fall in the number of households that qualify for temporary accommodation.

The report finds that the ability of local authorities to respond to increased homelessness is constrained by the limited options they have to house homeless families. As set out in the NAO's assessment of the housing market in Housing in England: overview, there has been a significant reduction in social housing over the past few decades. While spending by local authorities on homelessness services such as temporary accommodation has steadily increased since 2010, spending on overall housing services has fallen by 21% in real terms over the same period. The proportion of homeless households in temporary accommodation outside their home borough increased from 13% in March 2011 to 28% in March 2017. Almost 90% of these households are from London boroughs.

The Homelessness report is available from the NAO website.

Smith Institute report on the increase of local housing companies

Level of impact: ● (For Information)

The Smith Institute has published a report on the rise of local housing companies (LHCs) which may be of interest to members in considering bodies' arrangements to secure value for money.

The report finds there are already over 150 LHCs, set up by local authorities to provide commercial and social housing opportunities. The Smith Institute estimates that the number of LHC's will grow to around 200 over the next three years.

The report finds LHCs are largely outside of the housing revenue and housing association regulatory framework and are often partially financed by local authorities borrowing from the public works loan board and on-lending to the LHC while making a commercial return. With the changing regulatory environment around the current updating of the prudential code and the statutory investment regulations there may be a threat to the operation model of the LHC's.

The report can be accessed through the Smith Institute.



Appendix

Appendix 1

2016/17 audit deliverables

Deliverable	Purpose	Timing	Status
Planning			
Fee letter	Communicate indicative fee for the audit year	April 2016	Complete
External audit plan	Outline our audit strategy and planned approach Identify areas of audit focus and planned procedures	February 2017	Complete
Interim			
Interim report	Details and resolution of control and process issues. Identify improvements required prior to the issue of the draft financial statements and the year-end audit. Initial VFM assessment on the Council's arrangements for securing value for money in the use of its resources.	May 2017	Complete
Substantive procedures			
Report to those charged with governance (ISA 260 report)	Details the resolution of key audit issues. Communication of adjusted and unadjusted audit differences. Performance improvement recommendations identified during our audit. Commentary on the Council's value for money arrangements.	September 2017	Complete

Appendix 1

2016/17 audit deliverables (cont.)

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Deliverable	Purpose	Timing	Status
Completion			
Auditor's report	Providing an opinion on your accounts (including the Annual Governance Statement). Concluding on the arrangements in place for securing economy, efficiency and effectiveness in your use of resources (the VFM conclusion).	September 2017	Complete
WGA	Concluding on the Whole of Government Accounts consolidation pack in accordance with guidance issued by the National Audit Office.	September 2017	Complete
Annual audit letter	Summarise the outcomes and the key issues arising from our audit work for the year.	November 2017	Complete - see attached
Certification of claims and returns			
Certification of claims and returns report	Summarise the outcomes of certification work on your claims and returns for Government departments.	December 2017	On-ooing



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Annual Audit Letter 2016/17

Exeter City Council

kpmg.com/uk

October 2017

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This report is addressed to the Authority and has been prepared for the sole use of the Authority. We take no responsibility to any member of staff acting in their individual capacities, or to third parties. Public Sector Audit Appointments issued a document entitled Statement of Responsibilities of Auditors and Audited Bodies summarising where the responsibilities of auditors begin and end and what is expected from audited bodies. We draw your attention to this document which is available on Public Sector Audit Appointment's website (www.psaa.co.uk).

External auditors do not act as a substitute for the audited body's own responsibility for putting in place proper arrangements to ensure that public business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively.

We are committed to providing you with a high quality service. If you have any concerns or are dissatisfied with any part of KPMG's work, in the first instance you should contact Darren Gilbert, the engagement lead to the Authority, who will try to resolve your complaint. If you are dissatisfied with your response please contact the national lead partner for all of KPMG's work under our contract with Public Sector Audit Appointments Limited, Andrew Sayers (andrew.sayers@kpmg.co.uk). After this, if you are still dissatisfied with how your complaint has been handled you can access PSAA's complaints procedure by emailing generalenquiries@psaa.co.uk, by telephoning 020 7072 7445 or by writing to Public Sector Audit Appointments Limited, 3rd Floor, Local Government House, Smith Square, London, SW1P 3HZ.

The contacts at KPMG in connection with this report are:

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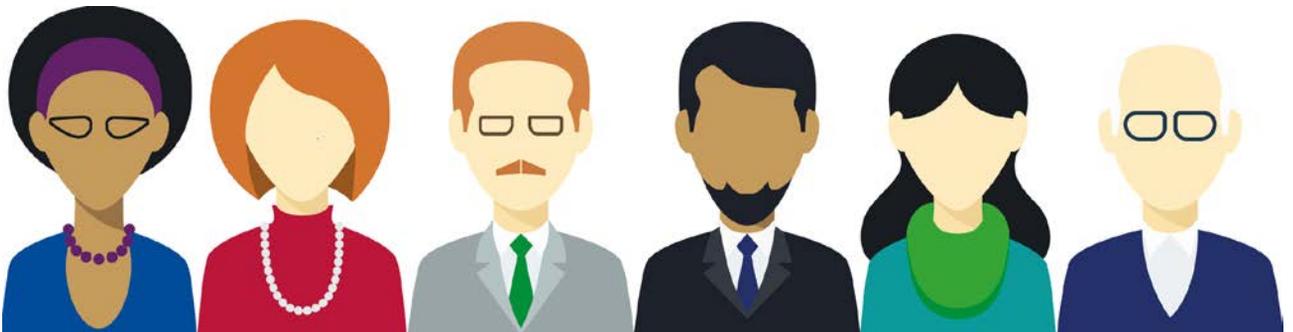
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Public Sector Audit

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Section one

Summary

This Annual Audit Letter summarises the outcome from our audit work at Exeter City Council in relation to the 2016/17 audit year. Although it is addressed to Members of the Authority, it is also intended to communicate these key messages to key external stakeholders, including members of the public, and will be placed on the Authority's website.

VFM conclusion

We issued an except for conclusion on the Authority's arrangements to secure value for money (VFM conclusion) for 2016/17 on 20 September 2017. This means that we have concluded that the Authority has proper arrangements to secure value for money, except for its arrangements for procuring supplies and services effectively to support the delivery of strategic priorities.

To arrive at our conclusion we looked at the Authority's arrangements to make informed decision making, sustainable resource deployment and working with partners and third parties.

The qualification is consistent with the 2015/16 audit, however we did note progress in this area. Changes in the procurement process have been implemented, and significant resource has been spent on the action plan, however the council has further progress to make to fully embed the new process into the culture within the Council. We therefore concluded that it is appropriate to qualify our VFM conclusion on an "except for" basis.

VFM risk areas

We undertook a risk assessment as part of our VFM audit work to identify the key areas impacting on our VFM conclusion and considered the arrangements you have put in place to mitigate these risks.

Our work included specific consideration of the following VFM audit risk areas:

- Non-Compliance with procurement process;
- New development of leisure centre and bus station; and
- Impact of performance of Strata Service solutions (IT provider established jointly by the Authority with two other councils) on the authority.

Audit opinion

We issued an unqualified opinion on the Authority's financial statements on 20 September 2017. This means that we believe the financial statements give a true and fair view of the financial position of the Authority and of its expenditure and income for the year. We did identify three audit adjustments with a total net value of £327 thousand.



Section one

Financial statements audit

The following sets out the significant audit differences identified by our audit of the Authority's financial statements for the year ended 31 March 2017:

- Internal recharges (£506,000) were disclosed as net in the subjective analysis. There is no net effect to the net cost of services, this adjustment enables consistency within the notes;
- A VAT creditor (£327,000) was incorrectly posted to short term debtors. This has been reclassified to short term creditors. There is zero net affect on net assets;
- One officer earning over the £50,000 threshold was excluded from the disclosure and has subsequently been included;
- From a review of payslips we noted that one officer was in the incorrect bracket.

There were no unadjusted audit differences identified by our audit of the Authority's financial statements for the year ended 31 March 2017.

Other information accompanying the financial statements

Whilst not explicitly covered by our audit opinion, we review other information that accompanies the financial statements to consider its material consistency with the audited accounts. This year we reviewed the Annual Governance Statement and Narrative Report. We concluded that they were consistent with our understanding and did not identify any issues.

Recommendations

We raised one high risk recommendations as a result of our 2016/17 audit work. This is detailed in Appendix 1 together with the action plan agreed by management.

- Close monitoring of the procurement action plan is necessary to ensure progress is sufficient and appropriate.

We will formally follow up this as well as the medium and low priority recommendations as part of our 2017/18 work.

Certificate

We issued our certificate on 27 September 2017. The certificate confirms that we have concluded the audit for 2016/17 in accordance with the requirements of the Local Audit & Accountability Act 2014 and the Code of Audit Practice.

Audit fee

Our fee for 2016/17 was £57,887, excluding VAT. Further detail is contained in Appendix 3.

Key issues and recommendations

No.	H/M/L	Issue and recommendation	Management response/responsible officer/due date
1		Procurement process	<p>We found evidence that council is not consistently following the procurement process when purchasing supplies and services. A purchase order should be raised, which is then matched to the purchase invoice once received. However we noted the following exceptions:</p> <ul style="list-style-type: none"> An email or a verbal agreement may be made to agree receipt of goods or services. The verbal agreement and email cannot be agreed back as proof of receipt of goods or services in a three way match. The constitution of the council states that a three way match requires that the purchase order be matched to the goods received note and purchase invoice. If the purchase invoice does not match the purchase order, then purchase order can retrospectively adjusted to agree to the purchase invoice. Not all purchase invoices are raised through the purchase order system. The requestor can call the supplier and make an order. The purchase invoice is received by the accounts payable team and allocated to the department, at which stage the invoice must be authorised by the appropriate person prior to a payment being made. This effectively bypasses the Purchase order process. <p>We also noted from our VFM work that there are still suppliers which are not on contracts or using outdated contracts. We understand this is work in progress within the procurement team.</p> <p>Recommendation</p> <p>The Council should ensure that all departments are aware of the details of procurement process and how to follow the procurement process. They should ensure that all documents have been received and matched prior to making payments.</p> <p>A purchase order should not be adjusted to agree to the invoice, if a goods received note is retained it would account for any adjustments between the PO and the purchase invoice received.</p> <p>The Council should continue to progress the procurement action plan, taking note of the issues raised in this report.</p> <p>Management response</p> <p>Agreed. Finance will determine that the system can work satisfactorily and determine a timetable for implementation. Aim to roll out from 2018-19</p>

Follow up of previous recommendations

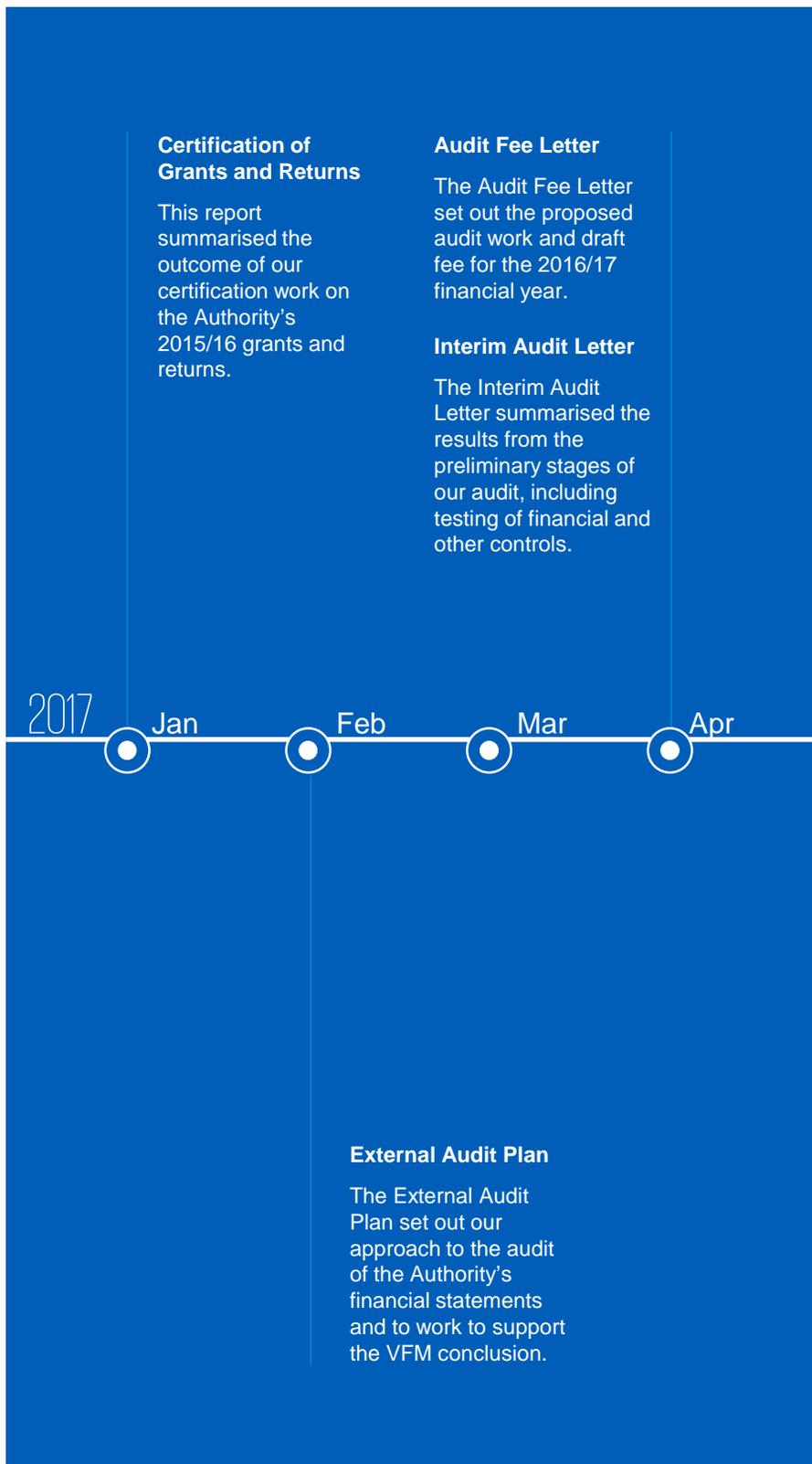
As part of our audit work we followed up on the Authority’s progress against previous audit recommendations. We are pleased to report that the Authority has taken appropriate action to address the issues that we have previously highlighted regarding authorisation of Journals. However the other two recommendations relating to Procurement and Super User access were not fully implemented, and we reraised this year.

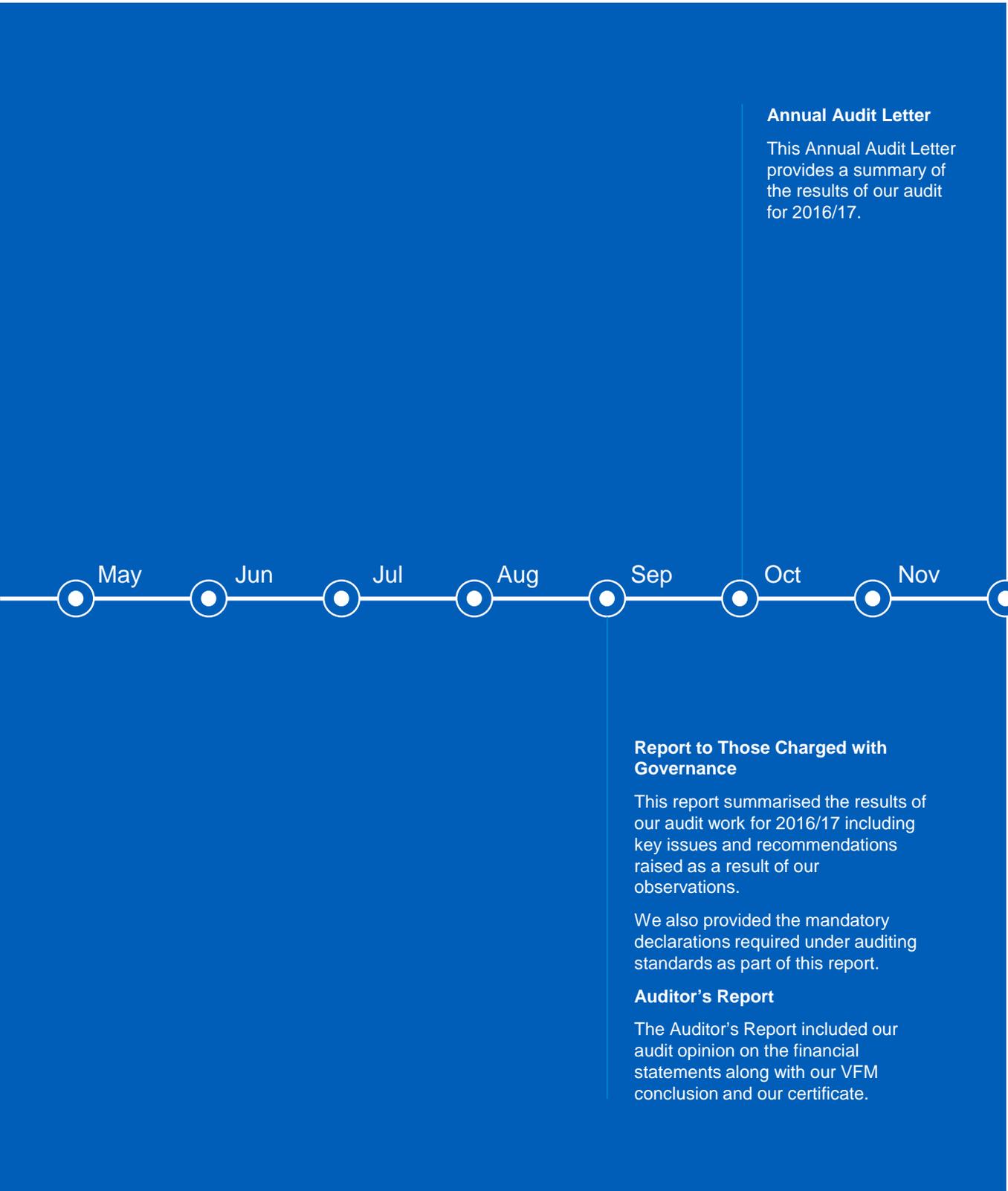
Appendix 2

Summary of reports issued

This appendix summarises the reports we issued since our last Annual Audit Letter.

These reports can be accessed via the Audit Committee pages on the Authority's website at www.exeter.gov.uk.





Annual Audit Letter

This Annual Audit Letter provides a summary of the results of our audit for 2016/17.

May

Jun

Jul

Aug

Sep

Oct

Nov

Report to Those Charged with Governance

This report summarised the results of our audit work for 2016/17 including key issues and recommendations raised as a result of our observations.

We also provided the mandatory declarations required under auditing standards as part of this report.

Auditor's Report

The Auditor's Report included our audit opinion on the financial statements along with our VFM conclusion and our certificate.

Appendix 3

Audit fees

This appendix provides information on our final fees for the 2016/17 audit.

To ensure transparency about the extent of our fee relationship with the Authority we have summarised below the outturn against the 2016/17 planned audit fee.

External audit

Our final fee for the 2016/17 audit of the Authority was £57,887, which is in line with the planned fee. Our fees are still subject to final determination by Public Sector Audit Appointments.

Certification of grants and returns

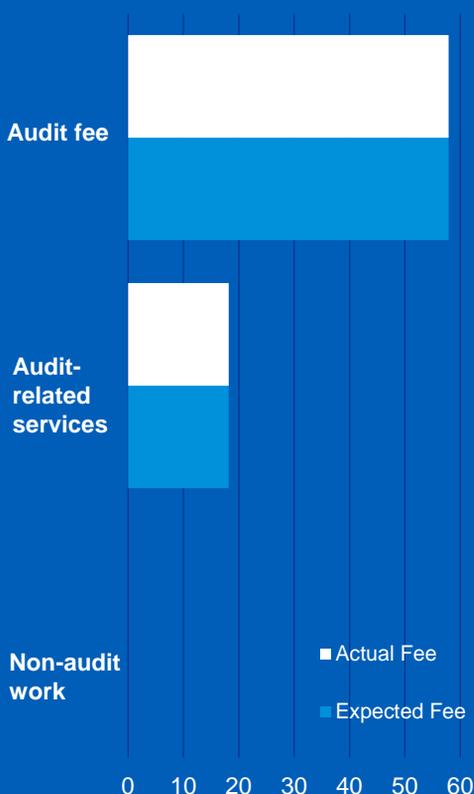
Under our terms of engagement with Public Sector Audit Appointments we undertake prescribed work in order to certify the Authority's housing benefit grant claim. This certification work is still ongoing. The PSAA scale rate for this work is £15,270, however a final fee will be confirmed through our reporting on the outcome of that work in January 2018.

We charged £3,000 for additional audit-related services for the Exeter City Council House Pooling return, which is outside of Public Sector Audit Appointment's certification regime.

Other services

We have not provided any non audit services during the year.

External audit fees 2016/17
(£'000)



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REPORT TO AUDIT & GOVERNANCE

Date of Meeting: 6th DECEMBER 2017

Report of: AUDIT MANAGERS

Title: INTERNAL AUDIT PROGRESS REPORT 2ND QUARTER 1st JULY TO 30th SEPTEMBER 2017

Is this a Key Decision?

No

* One that affects finances over £1m or significantly affects two or more wards. If this is a key decision then the item must be on the appropriate forward plan of key decisions.

Is this an Executive or Council Function? COUNCIL

1. What is the report about?

1.1 To report on internal audit work carried out during the period 1st July to 30th September 2017, to advise on overall progress against the Audit Plan and to report any emerging issues requiring consideration.

2. Recommendations:

2.1 That the Internal Audit Progress Report for the second quarter of the year 2017/18 be noted.

2.2 That the Audit and Governance Committee recommend to Council approval of a supplementary budget to cover the additional staffing costs to meet the approved audit plan.

3. Reasons for the recommendations:

3.1 One of the roles of this committee is to review quarterly internal audit reports and the main issues arising and seek assurance from management that action has been taken, where necessary.

3.2 The supplementary budget is required to provide any additional staffing resources required to cover staff sickness in order to deliver the approved audit plan.

4. What are the resource implications including non financial resources.

4.1 A supplementary budget of up to £7800 to cover staff.

5. Section 151 Officer comments:

5.1 The section 151 Officer supports the request for additional funds. Resources have been stretched owing to significant illness, both within the team and also elsewhere within the Finance team, which means the plan will not be completed. Given the fact that over 100 days have already be removed from the plan as part of earlier savings exercises,, the Section 151 Officer believes this is the most economically efficient proposal available.

5.2 With reference to section 8.2, the Section 151 Officer would expect to see some form of check that the systems are in balance even after the system is fully automated. Historical experience has demonstrated that this is not always the case with systems even when fully interfaced.

6. What are the legal aspects?

None identified.

7. Monitoring Officer's comments:

It is the Monitoring Officer's view that internal controls to safeguard the Council's Governance controls and to reduce risk is an essential to prevent loss due to frauds, errors and inefficiency. As a result, the Monitoring Officer is very supportive of the both recommendations.

8. Report details:

This Committee is responsible for the implementation and active monitoring of audit processes and actions, which includes performance against the annual audit plan, reviewing quarterly internal audit progress reports and seeking responses and assurance from management where remedial action has not been agreed or implemented within a reasonable timescale. The 2017/18 Audit Plan was approved at this Committee on 15th March 2017.

The purpose of Internal Audit is to provide an independent and objective review of the adequacy and effectiveness of the Council's arrangements for internal control, risk management and governance. The activities we audit are given an assurance rating as follows:

Excellent	★★★★★	The areas reviewed were found to be well controlled, internal controls are in place and operating effectively. Risks against achieving objectives are well managed.
Good	★★★★	Most of the areas reviewed were found to be adequately controlled. Generally risks are well managed but a few areas for improvement have been identified.
Some improvement required	★★★	There is a basic control framework in place, but not all risks are well managed and a number of controls are required to be strengthened.
Significant improvement required	★★	Most of the areas reviewed were not found to be adequately controlled. Risks are not well managed and require controls to be strengthened to ensure the achievement of system objectives.
Fundamental weakness	★	Controls are seriously lacking or ineffective in their operation No assurance can be given that the system's objectives will be achieved.

8.1 Progress against the plan and work undertaken

Internal Audit's objective is to examine the Council's financial and non-financial systems to check that there are adequate internal controls in place to prevent loss due to frauds, errors and inefficiency, and due attention is paid to corporate governance and risk management.

A summary of progress against the annual audit plan to date is shown at Appendix A, together with the current status of each area for review and the outcomes of the review, where completed.

A further summary of the outcomes of audits completed can be found at Appendix B.

Progress against the annual audit plan as at the end of September is mainly on target. There has been a significant overspend on time against contract management but as this is an area of concern for the Council we feel that the additional time used was appropriate, this has been resourced from the contingency time we build into our plan each year.

During the next half of the financial year we are anticipating insufficient resources to meet the approved audit plan due to a member of the Internal Audit team being on intermittent long-term sick leave since June and this will be continuing until the end of the financial year. In addition the audit plan included time from the Finance apprentice, however, due to sickness absence within the Finance team the apprentice will not be available to work within the Audit team. In order to deliver the approved internal audit plan it will be necessary to obtain additional resources. Having looked at a number of options the Section 151 Officer is proposing to use the existing team to work additional hours to cover any shortfall in staffing time. The Internal Audit service has already undergone significant cuts and as a result the audit plan coverage has been reduced, to reduce the audit plan further would be of detriment to the Council. Therefore, the Section 151 Officer recommends that the Audit and Governance Committee recommends to Council the approval of a supplementary budget.

8.2. **Issues for consideration from audit work undertaken**

There was one instance during this quarter where remedial action was not agreed by management:

Trade Waste Report dated 26.09.17

Issue reported:

Reconciliations are not currently carried out by Cleansing between the income received as per the Collective Bartec system and that shown on Ash Debtors and E-Fins.

Manager's response:

'The system should be fully automated by 1 December 2017, and data should transfer from the relevant field on Bartec to that on Ash Debtors. There would be no risk that the two systems would not balance'.

There were no instances of management agreeing remedial action which was not subsequently implemented within a reasonable timescale.

8.3 **Governance Issues**

The Council's annual governance statement (AGS) reported that as a result of the audit work that has been undertaken throughout the year no significant issues have been identified. However, the Council continues to make enhancements and

improvements to its governance arrangements and an action plan has been compiled which will be subject to regular monitoring by the Audit and Governance Committee.

An action plan of the issues identified has been included in Appendix C.

8.4 **Emerging issues/risks**

This section will be used to highlight any emerging issues or risks that the Audit Manager feels members of this committee should be aware of and will provide an opportunity for members to ask questions as to what action is being taken both corporately and by Internal Audit in order to ensure that the Council complies with legislation/good practise and that exposure to risk in these areas is minimised.

a) **General Data Protection Regulations (GDPR)**

The Data Protection Act is being replaced by the General Data Protection Regulation in May 2018 and both Members and Officers at the highest level must be committed to the delivery of this. The new regulation will introduce changes to the way we currently process personal information and the penalties for non-compliance will be significantly higher. Some of the key changes are detailed below:

- Fines for non-compliance will increase from £500,000 to £20 million
- Fines can be issued for any aspect of non-compliance, not just data security breaches
- We will need to undertake privacy assessments before we introduce any systems which process personal information
- We will need to have data processing contracts in place with any organisations that process personal information on our behalf
- We will need to document the personal data that we hold and ensure we have a legal basis for processing it by creating an Information Asset Register
- We will need to tell people why we are collecting their information, what we will do with it, who we may share it with, how long we will keep it for, what will happen if they don't provide the information and how they can complain. We cannot adopt a 'one size fits all' statement.
- We must report any breaches of the regulation to the Information Commissioner's Office with 72 hours of the breach occurring.

Action taken to date:

The Council has nominated a Data Protection Officer and has formed an Information Governance Group who are meeting monthly until the implementation of GDPR in May 2018. An information governance framework has been drafted for approval by SMB and an action plan has been compiled and progress against the plan will be monitored by the Group to ensure compliance is achieved. Executive Support Unit are currently meeting with services in order to compile an Information Asset Register and to identify services that are collecting information and working with them to meet the requirements of the new legislation.

b) **IR35**

What is IR35? - IR35 (sometimes referred to as the Intermediaries legislation) has been in place since 2000. This legislation aims to ensure that individuals who work through their own company, pay employment taxes in a similar way to employees, where they would be employed were it not for the intermediary that they work through e.g. some consultants.

What's changing? - From 6th April 2017 the responsibility for deciding whether the legislation applies has shifted from the worker to the Public Sector Body (including schools), agency or third-party that is paying them. Public Sector Bodies (PSB's) are required to identify workers provided through intermediaries and assess whether the workers are in-scope of IR35. PSB's will be required to deduct PAYE and NI from payments for workers assessed as being in-scope and remit them to HMRC as part of the normal payroll processes.

What happens if we don't get this right? – PSB's that do not deduct and pay over PAYE and NI for affected workers will be liable themselves for the deductions that they should have made. HMRC also has powers to charge interest and levy a penalty where it considers that an employer has not acted with due care.

Action taken to date:

Existing workers that were identified as in-scope have been put through the Employment Status indicator which is provided by HMRC and as a result of this exercise three people were put on the payroll. The Council has also notified all the agencies that we use that nobody falls outside of this scope and therefore the agencies need to be deducting PAYE and NI. Any new worker is put through the Employment Status Indicator and depending on the result of this, is either put on the payroll or treated as self-employed.

c) Organised Crime procurement

A recent pilot study by the Home Office has identified an increasing threat to public sector procurement activities from organised criminals. The study confirms suspicions that criminals are targeting local authorities and other public sector bodies. The number of value of contracts involved and a perception that controls are weak may be a factor in this.

In 2013, it was estimated that £2.1 billion of fraud was perpetrated against local government of £876m related to procurement fraud. Procurement is considered to be lucrative and attractive to serious and organised criminals because there are multiple ways to commit fraud. These include price fixing, bid rigging, double invoicing and so. Organised criminals may also seem to use businesses providing services to local authorities to launder criminal proceeds.

Local authorities and other public sector bodies are being encouraged to review procurement processes in order to establish and maintain systems to help reduce the likelihood of procurement related crime.

Action taken to date:

A self- assessment of the Council's Counter Fraud capability was undertaken last year by Internal Audit and a report of the findings issued to the Chief Finance Officer for presentation to SMB, to date no response has been received to the report.

9. How does the decision contribute to the Council's Corporate Plan?

Good governance contributes to the Council's purpose of a "Well Run Council".

10. What risks are there and how can they be reduced?

If the approved audit plan is not delivered there could be a lack of assurance on internal control risks leading to poor governance, this risk can be reduced by providing the resources required to meet the approved audit plan.

11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?

N/A

12. Are there any other options?

- Reduce of the audit plan but as already stated reduction of the plan would not be in the best interests of the Council.
- Buy in additional resources from an external provider. This option would be more expensive and less flexible.

Helen Putt & Helen Kelvey
Audit Managers

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

Contact for enquires:
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Room 2.3
01392 265275

**EXETER CITY COUNCIL
AUDIT AND GOVERNANCE COMMITTEE**

PROGRESS OF 2017/18 AUDIT PLAN AS AT 30/09/17

Audit Area	Budget Days	Actual Days	Report Status	Direction of travel since last audit	Assurance Rating	Number of findings		
						High	Med	Low

CX & GD

'Deliver good development'
'Help me run a successful business'
'Make Exeter a stronger city'

Planning	10	0.1	To start Q3					
Building Control	6	0	TBC					
New Homes Bonus	10	0	To start Q3					
CIL/Section 106	10	16.5	Final Report	No previous report	Some improvement required	0	7	2
Land Charges	6	6.8	Final Report	No previous report	Good	0	3	3

DCX

'Make Exeter a stronger city'
'Make Exeter an Analytical City'
'Make Exeter energy independent'
'Make Exeter congestion free'

Support Services

'A well run Council'

Main Accounting	5	2.2	To start Q3					
Income Management	12	1.3	To start Q3					
Procurement	15	1.3	On-going					
"Creditors First Half Year Second Half Year"	28	14.2	In progress					
VAT	10	13.5	Draft report					
People Management	20	7.4	Interim report issued					
ICT - Strata	12	3.0	On-going					
Business Continuity	10	0	TBC					
Risk management	10	5.6	In progress					
Contract Management	25	27.4	In progress					

National Fraud Initiative	5	6.1	No report due					
Counter Fraud	10	1.9	On-going					
Information Governance	5	2.5	In progress					
Equalities and Diversity	5	0.3	To start Q4					
Partnerships	5	0.2	To start Q3					
Hospitality and gift disclosures	2	0.1	To start Q4					
External Audit	2	0	On-going					
External Funding and Grants	15	1.0	In progress					

Director – Bindu Arjoon

'Help me with my housing and financial problems'

'Fix and maintain our Housing Assets'

Housing Benefit Subsidy	20	0.5	To start Q3					
Council Tax	15	2.1	To start Q4					
NDR	8	0	To start Q4					
Payment & collection	13	2.6	In progress					
Housing – Development, Asset Management & Customers	30	24.8	Draft report					

Director – David Bartram

'Keep Exeter looking good'

'Fix and maintain our Assets'

Trade Waste	8	9.2	Final Report	No previous report	Good	0	6	1
Fleet management	6	0.7	To start Q3					
Car Parks	8	8.8	Final Report	↔	Good	0	1	5
Bereavement Services	6	6.1	Final Report	↔	Good	0	1	2
Allotments	6	6.6	Final Report	↔	Good	0	0	3

Director – Jo Yelland

'Help me live well'

'Help me be active'

Disabled Facilities Grants	8	9.0	Final Report	↔	Good	0	1	4
Health & Safety	12	0.6	To start Q3					

Director – Jon-Paul Hedge

'Provide great things for me to see and do'

'Keep me informed'

Markets and Halls	8	1.3	In progress					
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Other

RIPA Administration	2	0.5						
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Contingency (special/frauds) including unplanned work	30	17.3
Follow-ups	8	1.4
Audit Development – Data Analysis/CAAT development	20	1.5
Audit planning and control	40	12
Total	486	225.7

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**EXETER CITY COUNCIL
AUDIT AND GOVERNANCE COMMITTEE**

Internal Audit Summary of Work Completed 01 July to 30 September 2017

Please note that this is a summary of recommendations only, as to include all recommendations made from each audit report in detail would result in a lengthy document. Members may request a full copy of any report once finalised or alternatively meet with the Audit Manager to discuss specific audits further.

Audit Area	Summary
<p>Community Infrastructure Levy/Section 106</p> <p>Assurance rating: Some improvement required ★★★</p>	<p>Community Infrastructure Levy (CIL)</p> <p>The Community Infrastructure Levy is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. It came into force on 6 April 2010 through the Community Infrastructure Regulations 2010.</p> <p>This infrastructure can include transport facilities, flood defences, schools, sports facilities and open spaces.</p> <p>CIL is usually applied at a fixed rate to all new development (excluding residential extensions and annexes) of one or more houses, or with a floor area of more than 100 square metres. This includes non-residential development. Different rates can be applied to different types of development and where there is appropriate evidence, can be set at zero.</p> <p>The amount of CIL collected since its introduction is £2,304,303.47.</p> <p>S106 agreements</p> <p>Planning obligations are agreements entered into between the Council and developers usually in conjunction with the granting of planning permission. Planning obligations apply to land, binding it and whoever owns it. They are made using powers under section 106 of the Town and Country Planning Act 1990, which is why they are called “section 106 agreements”.</p> <p>Planning obligations can be used to:</p> <ul style="list-style-type: none"> - control the use of land - ensure that the developer provides sufficient infrastructure improvements to deal with the development <p>A planning obligations might include:</p> <ul style="list-style-type: none"> - an element of affordable housing within a housing development - the provision of open space and play equipment as part of a development, and payment of a sum for their future maintenance - local road alterations or improvements required by Devon County Council <p>The overall objective of this audit was to test that adequate controls are in place and working effectively within City Development for CIL and Section 106 and in particular:</p>

	<p>- the collection of income - ensuring that any projects being funded are completed on time.</p> <p>A total of 7 'medium' risk issues were reported and remedial action has been agreed with management for all of the issues identified.</p>
<p>Land Charges</p> <p>Assurance rating: Good ★★★★</p>	<p>Local authority searches form part of the conveyancing process when buying and selling houses. They make sure that buyers of properties are not caught out by obligations on those properties.</p> <p>At Exeter City Council the Land Charge section, which is part of the City Development directorate, undertake these searches and report whether there are restrictions on a particular property or piece of land within Exeter's boundary.</p> <p>Applicants can submit search requests either through one of two portals (NLIS Hub or TM Portal), by post or by email. Since July 2016, 61% of the searches have been submitted through the NLIS Hub, 12% via the TM Portal, 14% by post and 13% by email.</p> <p>A fee is charged for undertaking the official searches and these can be found on the Councils' website. However as stated in The Local Authorities (England) Charges for Property Searches) Regulations 2008, the charges and internal recharges made under regulation 5(2) can be no more than the costs to the local authority of granting access to property records. The Council, over the course of any period of three consecutive financial years must take reasonable steps to ensure that the income does not exceed the costs.</p> <p>The scope of this audit included a review of fees and charges, applications and searches, records and income and banking.</p> <p>A total of 3 'medium' risk issues were identified and remedial action was agreed with management.</p>
<p>Trade Waste</p> <p>Assurance rating: Good ★★★★</p>	<p>The Council offers a comprehensive range of waste management services to help local organisations manage their waste. The purposes of this service are:</p> <ul style="list-style-type: none"> • to meet the Council's obligations under the provisions of the Environmental Protection Act 1990 • to enable business' to meet their duty of care waste management obligations • to extract as much value from waste as possible <p>The collection services include: mixed recycling in one container, separated recycling materials, glass, rubbish from conversion to energy, waste from special events, food waste, clinical waste and hazardous waste.</p> <p>Commercial and charitable organisations have a legal requirement to make formal arrangements for the collection and disposal of their waste and are prohibited from using domestic collections, public recycling banks or household waste recycling centres.</p> <p>Duty of care is normally discharged by having a contract with a registered waste contractor, such as the Council.</p> <p>The Waste (England and Wales) Regulations 2011 repealed the Environmental Protection (Duty of Care) Regulations 1991</p>

	<p>and apply the Duty of Care requirements brought in by the Environmental Protection Act 1990. Amongst other requirements this legislation requires that all collections are covered by a valid transfer note that includes a written description of the waste to enable anyone handling it to do so safely and appropriately.</p> <p>A new Waste Collection Service Agreement was introduced by the Council in February 2017, for implementation with effect from 1 April 2017. The following service improvements were introduced:</p> <ul style="list-style-type: none"> - invoicing monthly in arrears instead of paying for collection services three months in advance - customers only charged for the actual bins emptied or number of visits made to collect waste or recycling sacks - removal of bin hire costs to a more transparent pricing structure <p>The overall objectives of this audit were to test that:</p> <ul style="list-style-type: none"> - adequate controls are in place and working effectively within the Trade Refuse process - the new trade and weighbridge model in Bartec is working effectively <p>A total of 6 'medium' risk issues were reported</p> <p>I am pleased to report that remedial action has been agreed with the management for the majority of findings identified, however, remedial action was not agreed for the following finding identified as part of our audit work:</p> <ul style="list-style-type: none"> - after the testing on the system has been completed and there have been three clear runs which have balanced there are no plans to carry out regular reconciliations (between the income received as per the Collective Bartec system and that shown on Ash Debtors and E-Fins)
<p>Bereavement Services</p> <p>Assurance rating: Good ★★★★</p>	<p>Bereavement Services (BS) run the three cemeteries in Exeter, Higher Cemetery at Heavitree, Exwick Cemetery and Topsham Cemetery. Each of the cemeteries offer full burials, burial of ashes, a non-denomination chapel and a range of memorial options.</p> <p>In addition, the Council previously offered a service known as 'Exclusive Right of Burial' (EROB) in which people from across the city could choose to pay for the lease of a specific burial plot at a particular site. Due to a number of reasons such as running out of space at the cemeteries, this is a service that Bereavement Services no longer provide. However, BS still deal with the existing EROB cases that were purchased prior to the service ceasing to be offered. Leases for burial plots are extendable for 10 years at a time, with customers previously having purchased a 30 year lease (which are now beginning to expire in many cases).</p> <p>The scope of the audit included a review of payments and the efficiency of the service.</p> <p>The audit identified 1 'medium' risk issue and remedial action was agreed with management.</p>
<p>Allotments</p> <p>Assurance rating:</p>	<p>Exeter City Council generates income through renting out allotment plots to tenants from across the city.</p> <p>There are in excess of 1,400 allotment plots throughout the city centre located at 26 sites.</p>

<p>Good ★★★★</p>	<p>Each site has either an individual allotment representative or a small group managing the site – this is a voluntary position. Their roles include arranging the letting of vacant plots and the on-going day to day overseeing of the allotments.</p> <p>There is currently a waiting list of around 180 applicants expecting to receive a plot, with on average a 12 month waiting period. When a current tenant relinquishes a plot, it is offered to the applicant at the top of the waiting list.</p> <p>The scope of this audit included a review of payments and debt recovery.</p> <p>The audit identified only 3 'low' risk issues which will be followed up as part of the internal audit follow-up process.</p>
<p>Disabled Facilities Grant Assurance rating: Good ★★★★</p>	<p>If a home owner or someone living in a property is disabled they may qualify for a disabled facilities grant (DFG) which can be put towards the cost of providing adaptations and facilities to enable the disabled person to continue living in the property.</p> <p>Devon County Council (DCC) has been allocated funds by Central Government to support disabled adaptations. A share of this money is then allocated to each local authority within Devon to administer on behalf of DCC.</p> <p>For the 2016/17 year, Exeter City Council was awarded £671,330 through the Better Care Fund, although 10% of this amount, £67,133, was paid back to DCC to form a central funding pot so that all local authorities can access and use these additional funds where greatest demand for DFGs arise.</p> <p>The DFGs are issued subject to certain conditions and these are set out by the Department of Community and Local Government on an annual basis.</p> <p>The main objective of the audit was to review the awarding of the grants to check that they comply with the conditions as set out by Central Government</p> <p>One 'medium' risk issue was reported and remedial action has been agreed by management.</p>

SIGNIFICANT GOVERNANCE ISSUES PROGRESS REPORT - FROM ANNUAL GOVERNANCE STATEMENT 2016-17
Issues to address in 2017/18

Issue No.	Issue identified	Responsible Officer?	Summary of action proposed	Update Sept 2017	Update December 2017	Update March 2018	Notes
No significant governance issues were identified for 2016/17, however, measures to improve Governance arrangements have been proposed and implementation of these measures should be monitored.							
1	Implementation of a performance management framework.	B Luxton	A new performance management framework is currently being developed. The new framework will be presented to SMB once the new appointments to SMB have joined the Council but is hoped that the system will be implemented by October 2017 at the latest.	No further update	The Director with responsibility for Performance Management will be working with the Executive Support team to undertake further work to clarify strategic priorities and set SMART outcomes, indicators and measures that connect frontline performance with strategic outcomes.		
2	Medium term financial plan is not clearly linked to the Council's corporate priorities and work program.	D Hodgson	Medium Term Financial Plan to be reviewed and updated to link to both corporate priorities and the corporate work programme and to include the Council's Value for Money Strategy	No update	During an away day new capital bids have been identified and linked to priorities. Revenue bids - a way forward has been identified which involves directors reviewing services to identify savings over the next 12 months		
3	Services are currently struggling to deliver the capital programme predominantly due to either a lack of resources in some service areas or a skills gap in respect of procurement processes and procedures in other areas.	D Hodgson	Lack of resources issues – Members need to make a decision whether to modify the capital programme to fit with resources available or to increase resources in order to meet expectations. Procurement training issues - once the new Procurement Team is in place, a series of training programmes will be embarked upon to support those staff with procurement responsibilities. The BID process in respect of the capital programme will be updated for 2017/18.	No update	The Council's 3 largest projects are on hold and the rest of spend for quarter 1 was low.		
4	The Council needs to continue its work to implement processes and procedures to ensure proper governance and management of its information assets.	Information Governance Forum	To date, work has been undertaken to draft the Information Governance Framework and a report is due to be considered by SMB which will give approval for the Council to compile an Information Asset Register to enable improved management of risks and security of the Council's information assets.	Information Governance Forum has now been set up and is meeting monthly in the first instance to oversee the implementation of the Information Governance Framework and supporting policies to meet the requirements of General Data Protection Regulation (GDPR). The Council must be compliance by 28 May 2018. Executive Support Unit to work with Housing service to trial the process to identify and record information assets in order to compile and information asset register.	Executive support unit working with Housing service to trial the process, once the process had been proven this will be rolled out to all services.		

SIGNIFICANT GOVERNANCE ISSUES PROGRESS REPORT - FROM ANNUAL GOVERNANCE STATEMENT 2015-16

Issues outstanding to continue to be reviewed by Audit & Governance

Issue No.	Issue identified	Responsible Officer?	Summary of action proposed	Update June 2017	Update September 2017	Update December 2017	Notes
2	Separation of Duties - with considerable changes to the structure of the Council as it transforms the way in which services are delivered, separation of duties continues to be an area of concern. There is a risk that inadequate separation of duties could weaken the system of internal control, resulting in an increased risk of irregularities, errors and fraud.	Managers	Managers will continue to review the arrangements for separation of duties as a matter of course. No fundamental weaknesses have yet been identified.	Separation of duties continues to be an issue with some services due to the reduction in the resources. Management and Internal Audit continue to monitor the situation.		A breakdown in separation of duties has been identified within one service as part of the Internal Audit work undertaken. Audit are in the process of agreeing remedial action with management to rectify this weakness.	
3	Reduction in resources – general reductions in staffing numbers increase the impact of staff absences and other service interruptions. Absences may also increase owing to greater pressure of work and loss of motivation. As reported above, Internal Audit are aware of instances where long term sickness is impacting on service delivery.		Ongoing review	Temporary compensating controls have now ceased with one service as staff have now returned to work. Internal Audit continue to monitor the situation with other services affected.		No further update. Management and Internal Audit continue to monitor the situation.	
4	Contract Regulations – current contract regulations conflict with the legislative requirements of the Public Contract Regulations 2015, therefore the Council is at risk of breaching legislation.	AD Finance	A major review is planned to report shortly with a recommended way forward regarding procurement.	Review of contract regulations currently being undertaken.	New contract regulations have been drafted and are with Legal for review.	No further update.	
5	Procurement – the Council currently does not have a procurement function in place that is fit for purpose. A recent audit of procurement identified a number of shortcuts in the procurement process e.g. extending contracts rather than retendering, a lack of effective contract management. The Interim Procurement Officer left the authority at the end of March and has not been replaced. However, the Council has engaged a consultant to review the current procurement process to help meet the requirements of the Public Contract Regulations 2015 but this review has yet to be finalised.	AD Finance	A major review is planned to report shortly with a recommended way forward regarding procurement.	Final business case was approved by Executive 14.02.17.	No update	Still attempting to identify suitable candidates to fill posts. Housing have an interim in place to deal with important Housing contracts.	

REPORT TO AUDIT & GOVERNANCE COMMITTEE

Date of Meeting: 6 December 2017

Report of: Corporate Manager (Executive Support)

Title: Local Government Ombudsman's Annual Review of Complaints 2016-17

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

- 1.1. The report explains the role of the Local Government Ombudsman (LGO) in investigating and remedying complaints about councils. It also presents the LGO's annual review (2016-17) of complaints about Exeter City Council.

2. Recommendations:

- 2.1. That members note the report and highlight any issues with the complaints referred to in the LGO's annual review.

3. Reasons for the recommendation:

- 3.1. There is a legal duty to communicate to elected members the council's performance in relation to LGO investigations.

4. What are the resource implications including non-financial resources.

- 4.1. There are no resource implications.

5. Section 151 Officer comments:

There are no financial implications arising out of the report.

6. What are the legal aspects?

- 6.1. There is a duty under section 5(2) of the Local Government and Housing Act 1989 for the council's Monitoring Officer to prepare a formal report to the council where it appears that the authority, or any part of it, has acted or is likely to act in such a manner as to constitute maladministration or service failure, and where the LGO has conducted an investigation in relation to the matter. This requirement applies to all Ombudsman complaint decisions, not just those that result in a public report. It is therefore a significant statutory duty that is triggered in most authorities every year following findings of fault by the LGO.

- 6.2. The LGO considers that this duty is satisfactorily discharged if the Monitoring Officer makes a periodic report to the council summarising the findings on all upheld complaints over a specific period. This may be adequately addressed through an annual report on complaints to members.

- 6.3. Where an investigation has wider implications for council policy or exposes a more significant finding of maladministration, perhaps because of the scale of the fault or injustice, or the number of people affected, the LGO would expect the Monitoring Officer to consider whether the implications of that investigation should be individually reported to members.
- 6.4. In the unlikely event that an authority is minded not to comply with the LGO's recommendations following a finding of maladministration, she would always expect the Monitoring Officer to report this to members under section five of the Act. This is an exceptional and unusual course of action for any authority to take and should be considered at the highest tier of the authority.
- 6.5. The duties set out above in relation to the Local Government and Housing Act 1989 are in addition to, not instead of, the pre-existing duties placed on all authorities in relation to Ombudsman reports under The Local Government Act 1974. Under those provisions, whenever the LGO issues a formal, public report the council is obliged to lay that report before the council for consideration and respond within three months setting out the action taken, or proposed to be taken, in response to the report.

7. Monitoring Officer's comments:

Please see the Monitoring Officers' duty set out in paragraph 6 above.

8. Report details:

- 8.1. The Local Government Ombudsman (LGO) is a service that investigates complaints from the public about councils and some other bodies providing public services in England. The LGO investigates allegations of maladministration that have caused injustice to the complainant. Most council services can be investigated including some areas of housing, planning, council tax and housing benefit.
- 8.2. The LGO will usually only become involved after a council's complaints procedure has been exhausted. If the LGO finds the council acted with fault, which caused the person an injustice, it will recommend a remedy to put things right. The LGO's remedies are aimed at putting the person back in the position they would have been were it not for the fault. Where appropriate it also recommends action to avoid similar issues affecting other people - such as reviewing practice and procedure - and can recommend remedies for other persons affected by faults found in an individual complaint.
- 8.3. Details of the Exeter City Council complaints received and decisions made by the LGO for the year ending 31st March 2017 are set out below. This includes the number of cases where recommendations remedied the fault (one case) and the number of cases where the LGO decided the council had offered a satisfactory remedy during the local complaints process (nine cases). In these latter cases the LGO provides reassurance that the council had satisfactorily attempted to resolve the complaint before the person contacted the LGO. The LGO has not issued any formal public reports, as referred to in paragraphs 6.1 and 6.5 above.

Reference	Category	Decision Date	Decision	Remedy
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15014761	Planning & Development	28-Nov-16	Upheld	Financial Redress
15020217	Planning & Development	13-Apr-16	Closed after initial enquiries	Null
16004610	Highways & Transport	01-Jul-16	Referred back for local resolution	Null
16004792	Planning & Development	15-Aug-16	Closed after initial enquiries	Null
16007124	Planning & Development	19-Sep-16	Referred back for local resolution	Null
16008246	Housing	07-Sep-16	Referred back for local resolution	Null
16008977	Environmental Services	21-Sep-16	Referred back for local resolution	Null
16010248	Planning & Development	02-Nov-16	Closed after initial enquiries	Null
16014442	Corporate & Other Services	01-Feb-17	Referred back for local resolution	Null
16019376	Planning & Development	29-Mar-17	Referred back for local resolution	Null

8.4. Details of the LGO's findings on the one case that was upheld (Ref 15014761) are attached at Annex A. Planning officers have emphasised that this was a unique case in which the developer, their architect and the council's case officer had not recognised that a log cabin on an adjoining site was a separate 'residential' dwelling rather than a 'garden room' or similar. Mitigation has been put in place with planning officers required to highlight the potential separate occupation of large garden buildings.

9. How does the decision contribute to the Council's Corporate Plan?

9.1. Effective handling of complaints and following due process are facets of a well-run council.

10. What risks are there and how can they be reduced?

10.1. An effective complaint handling process is important for identifying service improvements. The current process is currently being reviewed to identify areas for improvement.

11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?

11.1. There is no negative impact.

Bruce Luxton
Corporate Manager (Executive Support)

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

Contact for enquires:

Democratic Services (Committees)
Room 2.3
01392 265275

Complaint reference:
15 014 761

Complaint against:
Exeter City Council

The Ombudsman's final decision

Summary: There was fault in the way the Council initially considered the impact of a proposed development on the complainant's property. The Council agreed to a payment of £750 to the complainant to reflect the time, trouble and inconvenience he suffered.

The complaint

1. Mr X says the Council failed to consider the impact of a proposed development on his property before it granted planning permission for the development.
2. Mr X sought legal and professional advice on the status of his property. He wants a refund of the costs he incurred.

The Ombudsman's role and powers

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. She provides a free service, but must use public money carefully. She may decide not to start or continue with an investigation if she believes:
 - it is unlikely she would find fault, or
 - the fault has not caused injustice to the person who complained, or
 - the injustice is not significant enough to justify her involvement, or
 - it is unlikely she could add to any previous investigation by the Council, or
 - she cannot achieve the outcome someone wants, or
 - there is another body better placed to consider this complaint, or
 - it would be reasonable for the person to ask for a council review or appeal.

(Local Government Act 1974, section 24A(6))

How I considered this complaint

4. I considered the complaint and correspondence sent to the Ombudsman by Mr X and the Council. I made formal enquiries of the Council and considered its response and the information it provided. I discussed matters with Mr X on the telephone. I sent a draft decision statement to Mr X and the Council. I considered the non material minor amendment application the developer submitted.

What I found

5. The Council received and determined a reserved matters application for a major development of 200 homes close to Mr X's home. Mr X's home comprises two properties; one being his home and the other a detached log cabin which is let to tenants.
6. The developer proposed a dwelling in a plot adjacent to the cabin. The case officer was unaware of the cabin and so did not consider the development's proximity to the cabin. The flank wall of the development was proposed to be about 1 to 2.4 metres away from the patio area of the cabin. The window of the dining area of the cabin would be around 4.5 metres from the centre of the flank wall where it is 8.9 metres high. The bathroom window of the cabin would be 3.8 metres from the flank wall. However, it is obscure glazed which helps to maintain some privacy.
7. The Council's residential design guide refers to dwellings having comfortable use and enjoyment of habitable rooms, gardens and communal spaces. Where habitable rooms face onto a blank or largely blank wall of another building the guide suggests a minimum distance equal to twice the height of the blank wall as the appropriate separation distance.
8. Mr X complained to the Council when he became aware of the proximity of the proposed development to the cabin. In its response to his complaint, the Council accepted the proposed development's impact on the amenity of the main room within the cabin and on his enjoyment and use of the patio area was greater than it would normally expect to see.
9. The Council entered into discussions with the developer on the possibility of amending the scheme. Its complaint response to Mr X suggested the discussions were unsuccessful and there was nothing it could achieve for Mr X. Mr X therefore complained to the Ombudsman.
10. I proposed negotiations involving all parties as a means of settling the complaint. However the developer submitted a non-material amendment application before those discussions could take place.
11. This time the Council clearly considered the relationship between the proposal and Mr X's property. In fact, the planning application was primarily aimed at addressing the impact on Mr X's property. The case officer explained the changes in the proposal and provided reasons why the revised proposal reduced the impact on Mr X's property.

Was there fault by the Council?

12. I found fault by the Council because it had not considered the impact of the proposed development on the amenity of Mr X's property before it approved the reserved matters application.
13. However, the recently approved amended planning application is the one the developer will implement. Mr X may disagree with the Council's judgement but such disagreement does not mean there was fault in the decision. The Council is the decision maker but it must show reasoned justification for its decisions. Here, I am satisfied the Council properly considered the impact on the amenities of Mr X's property.

Injustice and agreed action

14. I cannot recommend a refund of the legal and professional fees Mr X incurred as he sought legal and professional advice after he complained to the Ombudsman.
15. However, I consider Mr X and his tenant suffered time, trouble and inconvenience to a degree beyond that which the Ombudsman finds reasonable. So I recommended a payment of £750 to Mr X. The Council agreed to pay the compensation to Mr X.

Final decision

16. I found fault by the Council. I closed the complaint because the Council agreed to pay a sum of compensation to Mr X to remedy his injustice.

Investigator's decision on behalf of the Ombudsman

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REPORT TO AUDIT & GOVERNANCE

Date of Meeting: 6th DECEMBER 2017

Report of: City Solicitor & Head of HR

Title: Disqualification Criteria for Councillors and Mayors

Is this a Key Decision?

No

* One that affects finances over £1m or significantly affects two or more wards. If this is a key decision then the item must be on the appropriate forward plan of key decisions.

Is this an Executive or Council Function?

COUNCIL

1. What is the report about?

- 1.1 To seek Members views on the Consultation Paper, set out as Appendix 1 to this report, setting out the Governments' proposals for updating the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly elected mayor or member of the London Assembly.
- 1.2 The consultation will run for twelve weeks and will close on Friday the 8 December 2017.

2. Recommendations:

- 2.1 Members are asked to note the content of this report.
- 2.2 Members are asked whether they agree the following questions:
 - Should an individual who is subject to the Notification requirement set out in the Sexual offenders Act 2003 should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or the London Mayor?
 - Should an individual who is subject to Sexual Risk Order be free to stand for election as a member of a local authority, mayor of a combined authority, member of the London Assembly or the London Mayor?
 - Should an individual subject to a Civil Injunction or Criminal Behaviour Order be prohibited from standing for election or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or the London Mayor?
 - Do you agree that being subject to Civil Injunction or Criminal Behaviour Order be the only anti-social behaviour related reasons why an individual should be prohibited from standing for election or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or the London Mayor?
 - Do you consider that the proposal set out in the consultation paper will have an effect on the local authorities discharging their Public Sector Equalities Duties under the Equalities Act 2010?

- Do members have any further views on the proposals set out in this consultation paper?

3. What are the resource implications including non-financial resources.

3.1 There are no resource implications associated with this report.

4. Section 151 Officer Comments:

4.1 There are no financial implications contained in this report.

5. What are the legal aspects?

5.1 The legal aspects are set out in paragraph 8 of this report.

6. Monitoring Officer's comments:

6.1 The Monitoring Officer welcomes these proposals. However, these new disqualification rules do nothing to address the issues raised by Local Government in relation to the current members Code of Conduct which lacks the power to impose sanctions such as suspending a member who has been found to have breached the rules of conduct.

7. Returning Officer's comments

7.1 The Returning Officer welcomes these proposals, provided sufficient clarity is given in the proposed legislation as to the reasons for possible disqualification.

7. Report details:

7.1 It is the Government's view that councillors take strategic decisions that affect everyone's life. They decide how best to use council taxpayers' money and manage local authority resources, including property, land and assets. They have a leading role to play in building and preserving a society where the rights and freedoms of individuals are respected. They should be community champions. As a result, it is vital that they have the trust of the electorate.

7.2 The Government considers there should be consequences where Councillors fall short of behaviour expected of anyone in a free, inclusive, tolerant society that respects individuals and society generally where this has led to enforcement action against an individual.

8. The current legal position regarding Disqualification Criteria:

8.1 Under Section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority if they:

- Are employed by the local authority
- Are employed by a company which is under the control of a local authority
- Subject to bankruptcy orders
- Have, within 5 years before being elected, or any time since being elected,

been convicted in the UK of any offence and have received a sentence of imprisonment (suspended or otherwise) for a period of not less than 3 months without the option of a fine.

- Are disqualified under Part III of the Representation of the People Act 1983
- Are employed under the direction of various local authority committees, boards or the Greater London Authority or
- Are a teacher in a school maintained by a local authority.

9. The Governments' new Proposals:

9.1 The Government considers that anyone who is subject to the sex offenders notification requirements (commonly referred to as being on the sex offenders register) should be barred from standing for election, or holding office as a local authority member.

9.2 The Government believes that Anti-Social behaviour blights people's lives and can leave victims feeling powerless. As a result, the Government considers that individuals who are subject to anti-social behaviour sanction that has been issued by the Court, i.e. a Civil Injunction or a Criminal Behaviour Order should be barred from standing for election or holding office.

9.3 It is proposed that the period of time for which they would be barred would end once they are no longer subject to the injunction or Order.

9.4 The proposals in this consultation would not apply retrospectively, i.e. any incumbent member who is on the sex offenders register or subject to a Civil Injunction or Criminal Behaviour Order at the time the changes come into force would not be affected. They would however be prevented from standing for re-election after the changes come into force.

10. How does the decision contribute to the Council's Corporate Plan?

10.1 Good governance contributes to the Council's purpose of a "Well Run Council".

11. What risks are there and how can they be reduced?

11.1 There are no risks identified with this report.

12. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?

12.1 The Government's proposals if enacted would afford better protection to children, young people and vulnerable adults.

13. Are there any other options?

13.1 Obviously members are at liberty to propose any other alternative they consider appropriate as part of the consultation process.

Baan AL-Khafaji

City Solicitor & Monitoring Officer

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

The Department for Communities and local Government's Consultation on updating disqualification criteria for local authority members September 2017.

Contact for enquires:
Democratic Services (Committees)
Room 2.3
01392 265275



Department for
Communities and
Local Government

Disqualification criteria for Councillors and Mayors

Consultation on updating disqualification criteria for local
authority members



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Scope of the consultation

A consultation paper issued by the Department for Communities and Local Government on behalf of the Secretary of State

Topic of this consultation:	This consultation paper sets out the government's proposals for updating the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly.
Scope of this consultation:	<p>The Department for Communities and Local Government is consulting on proposals to update the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly, if they are subject to:</p> <ul style="list-style-type: none"> • the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as 'being on the sex offenders register'); • a civil injunction granted under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014; or • a Criminal Behaviour Order made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014. <p>Any changes to the disqualification criteria would require changes to primary legislation, in particular the Local Government Act 1972, the Local Democracy, Economic Development and Construction Act 2009, and the Greater London Authority Act 1999.</p> <p>The proposed changes would not act retrospectively.</p>
Geographical scope:	The proposals in this consultation paper apply to certain authorities in England, including local authorities, combined authorities and the Greater London Authority. They do <u>not</u> apply to authorities in Wales, Scotland or Northern Ireland.

Impact Assessment:	No impact assessment has been produced for this consultation.
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Basic Information

To:	This consultation is open to everyone. We particularly seek the views of individual members of the public, prospective and current councillors and those bodies that represent the interests of local authorities and councillors at all levels.
Body responsible for the consultation:	The Local Government Stewardship Division in the Department for Communities and Local Government is responsible for conducting the consultation.
Duration:	The consultation will begin on Monday 18 September 2017. The consultation will run for 12 weeks and will close on Friday 8 December 2017. All responses should be received by no later than 5pm on Friday 8 December 2017.
Enquiries:	<p>If you have any enquiries, please contact:</p> <p>Stuart Young email: stuart.young@communities.gsi.gov.uk</p> <p>DCLG Tel: 0303 44 40000</p> <p>How to respond:</p> <p>Please respond by email to: Section80consultation@communities.gsi.gov.uk</p> <p>Alternatively, please send postal responses to:</p> <p>Stuart Young Department for Communities and Local Government 2nd Floor, NE, Fry Building 2 Marsham Street London SW1P 4DF</p> <p>Responses should be received by 5pm on Friday 8 December 2017.</p>

<p>How to respond:</p>	<p>You can respond by email or by post.</p> <p>When responding, please make it clear which questions you are responding to.</p> <p>When you reply it would be very useful if you could confirm whether you are replying as an individual or submitting an</p>
	<p>official response on behalf of an organisation, and include:</p> <ul style="list-style-type: none"> - your name - your position (if applicable) - the name and address of your organisation (if applicable) - an address, and - an email address (if you have one)

Introduction

1. Local authority members (i.e. councillors), mayors of combined authorities, members of the Greater London Assembly and the London Mayor take strategic decisions that affect all our lives. They decide how best to use taxpayers' money and manage local authority resources, including property, land and assets. They also have a leading role to play in building and preserving a society where the rights and freedoms of individuals are respected. They should be community champions. It is vital, therefore, that they have the trust of the electorate.
2. The Government considers that there should be consequences where councillors, mayors and London Assembly members fall short of the behaviour expected of anyone in a free, inclusive and tolerant society that respects individuals and society generally, and where this has led to enforcement action against an individual.
3. Existing legislation prevents individuals standing, or holding office, as a local authority member, London Assembly member or directly-elected mayor if they have, within five years of the day of the election, or since their election, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment, suspended or not, for a period of not less than three months without the option of a fine.
4. The Government considers that the law should be updated to reflect new options which exist to protect the public and address unlawful and unacceptable behaviour.
5. This consultation proposes updating the disqualification criteria in section 80 of the Local Government Act 1972, paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009, and section 21 of the Greater London Authority Act 1999 to prohibit those subject to the notification requirements (commonly referred to as 'being on the sex offenders register') and those subject to certain anti-social behaviour sanctions from being local authority members, London Assembly members or directly-elected mayors.
6. This consultation does not propose changing the disqualification criteria for Police and Crime Commissioners (PCCs). For the purposes of this consultation, 'local authority member' also extends to directly-elected mayors and co-opted members of authorities, and 'local authority' means:
 - a county council
 - a district council
 - a London Borough council
 - a parish council

The disqualification criteria in section 80 of the Local Government Act 1972, paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009, and section 21 of the Greater London Authority Act 1999 do not cover the Council of the Isles of Scilly or the Common Council of the City of London. Therefore, the proposals in this consultation do not extend to these councils.

The Current Disqualification Criteria

7. Under section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority, if they:
 - are employed by the local authority;
 - are employed by a company which is under the control of the local authority;
 - are subject to bankruptcy orders;
 - have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine;
 - are disqualified under Part III of the Representation of the People Act 1983;
 - are employed under the direction of various local authority committees, boards or the Greater London Authority; or
 - are a teacher in a school maintained by the local authority.

8. Paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009 sets out the criteria on disqualification from standing as, or being, a directly-elected mayor of a combined authority. A person is disqualified from being elected or holding office as the mayor of a combined authority if they:
 - hold any paid office or employment (other than the office of mayor or deputy mayor), including any appointments or elections made by or on behalf of the combined authority or any of the constituent councils of the combined authority;
 - are subject to bankruptcy orders;
 - have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine; or
 - is disqualified for being elected or for being a member of a constituent council under Part 3 of the Representation of the People Act 1983.

9. Section 21 of the Greater London Authority Act 1999 disqualifies someone from being the Mayor or an Assembly member if they:
 - are a member of staff of the Authority;
 - hold an office that disqualifies the holder from being Mayor or an Assembly member;
 - are subject to bankruptcy orders are bankrupt or have made a composition agreement with creditors;
 - have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine;
 - are disqualified under section 85A or Part III of the Representation of the People Act 1983 from being the Mayor or an Assembly member; or
 - are a paid officer of a London borough council who is employed under the direction of:

- a council committee or sub-committee whose membership includes the Mayor or someone appointed on the nomination of the Authority;
- a joint committee whose membership includes a member appointed on the nomination of the council and a member appointed on the nomination of the Authority;
- the council executive, or one of its committees, whose membership includes the Mayor or someone appointed on the nomination of the Authority;
- a member of the council's executive who is the Mayor or someone appointed on the nomination of the Authority.

Sexual Offences

10. The Government considers that anyone who is subject to sex offender notification requirements, commonly referred to as ‘being on the sex offenders register’, should be barred from standing for election, or holding office, as a local authority member, directly-elected mayor or member of the London Assembly. The period of time for which they would be barred would end once they were no longer subject to these notification requirements.

11. An individual can become subject to notification requirements by committing certain criminal acts or being issued with certain types of civil order:

- Being subject to sex offender notification requirements is an automatic consequence of being cautioned or convicted of a sexual offence listed in Schedule 3 of the Sexual Offences Act 2003 (see: <http://www.legislation.gov.uk/ukpga/2003/42/schedule/3>).
- Sexual Harm Prevention Orders are civil orders intended to protect the public from offenders convicted of a sexual or violent offence who pose a risk of sexual harm to the public by placing restrictions on their behaviour. Offenders who are subject to Sexual Harm Prevention Orders become subject to notification requirements.
- Notification Orders are civil orders intended to protect the public in the UK from the risks posed by sex offenders who have been convicted, cautioned, warned or reprimanded for sexual offences committed overseas. Such offenders may be British or foreign nationals convicted, cautioned etc. abroad of a relevant offence. Offenders who are subject to Notification Orders become subject to notification requirements.

12. The duration of the notification requirement period (i.e. how long a person is on the sex offenders register) is set out in the Sexual Offences Act 2003 and in the table below. The courts have no discretion over this.

Where the (adult) offender is:	The notification period is:
Sentenced to imprisonment for life or to a term of 30 months or more	An indefinite period
Detained in a hospital subject to a restriction order	An indefinite period
Sentenced to imprisonment for more than 6 months but less than 30 months imprisonment	10 years
Sentenced to imprisonment for 6 months or less	7 years
Detained in a hospital without being subject to a restriction order	7 years
Cautioned	2 years

Conditional discharge	The period of the conditional discharge
Any other description (i.e. community sentence, fine)	5 years

These periods are halved for offenders who are under 18 on the date of the caution, conviction or finding, as defined within the 2003 Act.

13. Offenders who are subject to the notification requirements must notify the police of (amongst other things) their: name, date of birth, national insurance number, home address, passport number, bank account and credit card details. They must do this annually, any time the details change or when they travel abroad. They must also notify the police when they stay or reside with a child for more than 12 hours.
14. Further information on the Sexual Offences Act 2003 can be found at: <https://www.gov.uk/government/publications/guidance-on-part-2-of-the-sexualoffences-act-2003>.
15. The Government does not propose including another type of civil order, the Sexual Risk Order, as this person would not have been convicted or cautioned of a sexual offence under the Sexual Offences Act 2003 and are not subject to notification requirements for registered sex offenders. A Sexual Risk Order does require the individual to notify to the police their name and their home address. A Sexual Risk Order can be sought by the police against an individual who has not been convicted, cautioned etc. of an offence under Schedule 3 or Schedule 5 of the 2003 Act but who is nevertheless thought to pose a risk of harm to the public in the UK and/or children or vulnerable adults abroad.

Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. who is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Anti-Social Behaviour

16. Anti-social behaviour blights people's lives and can leave victims feeling powerless. These are a range of powers to the courts, police and local authorities to tackle the problems in the table below.
17. The Government considers that an individual who is subject to an anti-social behaviour sanction that has been issued by the court, i.e. a Civil Injunction or a Criminal Behaviour Order, should be barred from standing for election, or holding

office, as a local authority member, directly-elected mayor or member of the London Assembly. The period of time for which they would be barred would end once they were no longer subject to the injunction or Order.

Anti-Social Behaviour (ASB) Powers

Type	Power	Description
Issued by the court to deal with individuals	Civil Injunction	A civil order with a civil burden of proof. The injunction can include both prohibitions and positive requirements to tackle the underlying causes of the behaviour. Applications can be made by police, councils, social landlords, Transport for London, Environment Agency, Natural Resources Wales and NHS Protect.
	Criminal Behaviour Order	A court order available on conviction. The order can be issued by any criminal court against a person who has been convicted of an offence. It is aimed at tackling the most persistently anti-social individuals who are also engaged in criminal activity. The order can include both prohibitions and positive requirements. Applications are made by the prosecution, in most cases by the Crown Prosecution Service, either at its own initiative or following a request from the police or council.
Used by the police to move problem groups or individuals on	Dispersal Power	A flexible power which the police can use in a range of situations to disperse anti-social individuals and provide immediate short-term respite to a local community. It allows the police to deal instantly with someone's behaviour and prevent it escalating. The use of the power must be authorised by an officer of at least inspector rank, to be used in a specific locality for up to 48 hours or on a case by case basis. This is to ensure that the power is used fairly and proportionately and only in circumstances in which it is necessary.
	Community Protection Notice	A notice designed to deal with particular problems which negatively affect the community's quality of life. The Notice can be issued to anyone aged 16 or over, businesses or organisations. This is a twostage power and a written warning has to be issued first. Failure to stop the behaviour or take action to rectify the problem would lead to the notice being issued. The power can be used by councils, police and social landlords (if designated by the council).

Issued by councils, the police and social landlords to deal with problem places	Public Spaces Protection Order	Designed to deal with anti-social behaviour in a public place and apply restrictions to how that public space can be used to stop or prevent antisocial behaviour. The order is issued by the council. Before the order can be made, the council must consult with the police and whatever community representatives they think appropriate, including regular users of the public space. Before the order is made the council must also publish the draft order.
	Closure Power	A fast and flexible two-stage power. Can be used to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder, including residential, business and licensed premises. The police and councils are able to issue Closure Notices for up to 48 hours and the courts are able to issue Closure Orders for up to six months if satisfied that the legal tests have been met. Following the issue of a Closure Notice, an application must be made to the magistrates' court for a closure order.

Q3. Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Q4. Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Retrospection

18. Legislation does not generally apply retrospectively, the principle being that the law should operate in a clear and certain manner and the public is entitled to know the state of the law at a particular time.

19. The proposals in this consultation would not apply retrospectively, i.e. any incumbent local authority member, directly-elected mayor or member of the London Assembly, who is on the sex offenders register or subject to a Civil Injunction or Criminal Behaviour Order at the time the changes come into force would not be affected.

20. Such individuals would of course be prevented from standing for re-election after the changes came into force.

Questions

Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or the London Mayor?

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Q5. Do you consider that the proposals set out in this consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?

Q6. Do you have any further views about the proposals set out in this consultation paper?

About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

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