



## Audit and Governance Committee

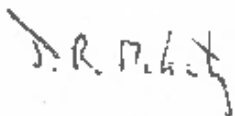
**Meeting: Monday, 11th September 2023 at 6.30 pm in Civic Suite, North Warehouse, The Docks, Gloucester, GL1 2EP**

<b>Membership:</b>	Cllrs. Wilson (Chair), Gravells MBE (Vice-Chair), Bowkett, Brooker, Durdey, Morgan, Patel and Pullen
<b>Contact:</b>	Democratic and Electoral Services 01452 396126 <a href="mailto:democratic.services@gloucester.gov.uk">democratic.services@gloucester.gov.uk</a>

### AGENDA

<b>1.</b>	<b>APOLOGIES</b>  To receive any apologies for absence
<b>2.</b>	<b>DECLARATIONS OF INTEREST</b>  To receive from Members, declarations of the existence of any disclosable pecuniary, or nonpecuniary, interests and the nature of those interests in relation to any agenda item. Please see Agenda Notes.
<b>3.</b>	<b>MINUTES (Pages 5 - 10)</b>  To approve as a correct record the minutes of the meeting held on 17 July 2023.
<b>4.</b>	<b>PUBLIC QUESTION TIME (15 MINUTES)</b>  The opportunity is given to members of the public to put questions to the Committee provided that a question does not relate to: • Matters which are the subject of current or pending legal proceedings or • Matters relating to employees or former employees of the Council or comments in respect of individual Council Officers. To ask a question at this meeting, please submit it to <a href="mailto:democratic.services@gloucester.gov.uk">democratic.services@gloucester.gov.uk</a> by 12pm on Wednesday 6 September 2023 or telephone 01452 396203 for support
<b>5.</b>	<b>PETITIONS AND DEPUTATIONS (15 MINUTES)</b>  A period not exceeding three minutes is allowed for the presentation of a petition or deputation provided that no such petition or deputation is in relation to:  • Matters relating to individual Council Officers, or  • Matters relating to current or pending legal proceedings
<b>6.</b>	<b>ANNUAL REPORT OF THE HEAD OF INTERNAL AUDIT 2022-23 (Pages 11 - 22)</b>  To consider the report concerning audit activity for 2022-23.
<b>7.</b>	<b>ANNUAL REPORT ON COUNTER FRAUD ACTIVITY (Pages 23 - 38)</b>

	To receive the annual report for counter fraud activity during 2022-23.
<b>8.</b>	<b>INTERNAL AUDIT ACTIVITY 2023/24 - PROGRESS REPORT</b> (Pages 39 - 52)  To consider the report of the Head of ARA
<b>9.</b>	<b>AUDIT PLAN - 2021/22 STATEMENT OF ACCOUNTS'</b>  To consider the Audit Plan as presented by the Council's External Auditor.
<b>10.</b>	<b>S. 106 AGREEMENTS - UPDATE</b>  To receive a progress update
<b>11.</b>	<b>TREASURY MANAGEMENT - QUARTERLY UPDATE</b>  To receive the quarterly update of the Head of Finance and Resources.  <b>WILL FOLLOW</b>
<b>12.</b>	<b>LOCAL GOVERNMENT OMBUDSMAN - RECENT FINDING</b> (Pages 53 - 68)  To receive the report of the Monitoring Officer.
<b>13.</b>	<b>AUDIT AND GOVERNANCE COMMITTEE WORK PROGRAMME</b> (Pages 69 - 70)  To consider the Committee's Work Programme.
<b>14.</b>	<b>DATE OF NEXT MEETING</b>  Monday 13 November 2023 at 6.30pm in the Civic Suite, North Warehouse.



**Jon McGinty**  
**Managing Director**

**Date of Publication: Friday, 1 September 2023**

## NOTES

### Disclosable Pecuniary Interests

The duties to register, disclose and not to participate in respect of any matter in which a member has a Disclosable Pecuniary Interest are set out in Chapter 7 of the Localism Act 2011.

Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as follows –

<u>Interest</u>	<u>Prescribed description</u>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the previous 12 months (up to and including the date of notification of the interest) in respect of any expenses incurred by you carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between you, your spouse or civil partner or person with whom you are living as a spouse or civil partner (or a body in which you or they have a beneficial interest) and the Council (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged
Land	Any beneficial interest in land which is within the Council's area.  For this purpose "land" includes an easement, servitude, interest or right in or over land which does not carry with it a right for you, your spouse, civil partner or person with whom you are living as a spouse or civil partner (alone or jointly with another) to occupy the land or to receive income.
Licences	Any licence (alone or jointly with others) to occupy land in the Council's area for a month or longer.
Corporate tenancies	Any tenancy where (to your knowledge) – (a) the landlord is the Council; and (b) the tenant is a body in which you, your spouse or civil partner or a person you are living with as a spouse or civil partner has a beneficial interest
Securities	Any beneficial interest in securities of a body where – (a) that body (to your knowledge) has a place of business or land in the Council's area and (b) either – i. The total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or ii. If the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, your spouse or civil partner or person with

whom you are living as a spouse or civil partner has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For this purpose, "securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

NOTE: the requirements in respect of the registration and disclosure of Disclosable Pecuniary Interests and withdrawing from participating in respect of any matter where you have a Disclosable Pecuniary Interest apply to your interests and those of your spouse or civil partner or person with whom you are living as a spouse or civil partner where you are aware of their interest.

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If you, or someone you know cannot understand English and need help with this information, or if you would like a large print, Braille, or audio version of this information please call 01452 396396.

### **Recording of meetings**

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Any recording must take place in such a way as to ensure that the view of Councillors, Officers, the Public and Press is not obstructed. The use of flash photography and/or additional lighting will not be allowed unless this has been discussed and agreed in advance of the meeting.

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- You should proceed calmly; do not run and do not use the lifts;
- Do not stop to collect personal belongings;
- Once you are outside, please do not wait immediately next to the building; gather at the assembly point in the car park and await further instructions;
- Do not re-enter the building until told by a member of staff or the fire brigade that it is safe to do so.



## AUDIT AND GOVERNANCE COMMITTEE

**MEETING** : Monday, 17th July 2023

**PRESENT** : Cllrs. Wilson (Chair), Gravells MBE (Vice-Chair), Brooker, Durdey, Morgan, Patel, Chambers-Dubus and Hyman

### **Others in Attendance**

Corporate Director  
Monitoring Officer  
Head of Finance and Resources  
Head of ARA  
Accountancy Manager  
Principal Auditor  
Democratic and Electoral Services Team Leader

**APOLOGIES** : Cllrs. Bowkett and Pullen

### **1. APPOINTMENT OF CHAIR AND VICE-CHAIR**

**RESOLVED that:-** The Audit and Governance Committee **NOTE** the appointments of Councillor Wilson and Councillor Gravells as Chair and Vice-Chair of the Committee.

### **2. DECLARATIONS OF INTEREST**

There were no declarations of interest.

### **3. MINUTES**

The minutes of the meeting which took place on 6 March 2023 were approved and signed as a correct record by the Chair.

### **4. PUBLIC QUESTION TIME (15 MINUTES)**

There were no public questions.

### **5. PETITIONS AND DEPUTATIONS (15 MINUTES)**

There were no petitions nor deputations.

**AUDIT AND GOVERNANCE COMMITTEE**  
**17.07.23**

**6. REVIEW OF S. 106 AGREEMENTS – FINAL REPORT**

- 6.1 The Chair thanked the Corporate Director and Internal Audit for their work in identifying issues and drawing up the action plan. He also thanked Councillor Gravells for raising the matter and identifying issues and suggested that one mitigation against risk in the future would be Members raising issues of concern.
- 6.2 In response to a query from the Chair, the Corporate Director did not believe it to be the case that it was likely that monies would have to be returned but that only once all work was complete could this be confirmed.
- 6.3 The Head of Finance and Resources clarified that the finance team had been in the process of reconciling agreements prior to the cyber incident and that he was happy that the total figures were accurate but the split between various projects had not yet been completed – i.e. total figures provided were accurate.
- 6.4 The Chair queried why it may have been the case that officers from different departments had different figures. The Corporate Director clarified that there were differing methodologies across teams and measured at different points in time. It was anticipated that using a new system to track such matters would resolve this. It was also clarified that the system was already used to manage the Community Infrastructure Levy, would capture a greater level of detail in respect of s. 106 agreements and that work was still ongoing to populate the system. Senior Management and the Planning Committee would be receiving regular updates on its progress.
- 6.5 Councillor Gravells thanked the Internal Audit team for producing the report and stated that it was important that lessons be learnt. Echoing the Chair, he encouraged Members to raise issues when encountered. Referring to contributions having not been received over a period of time, the Corporate Director advised that, in that case, the debt was in recovery and legal proceedings would be initiated where appropriate.
- 6.6 In response to a point made by Councillor Morgan regarding whether it would be preferable if agreements did not deal with merely small sums, the Corporate Director advised that introducing a charging schedule had been raised and was under consideration.
- 6.7 **RESOLVED that:-** The Audit and Governance Committee **NOTE** the report.

**7. ANNUAL RISK MANAGEMENT REPORT 2022/23 AND STRATEGIC RISK REGISTER**

- 7.1 The Head of ARA outlined the report and that it supported the Council's risk management work. The Chair informed Members that the report was a good example of illustrating all the work of the Committee.
- 7.2 **RESOLVED that:-** The Audit and Governance Committee

**AUDIT AND GOVERNANCE COMMITTEE**  
**17.07.23**

- Note and endorse: - The risk management arrangements in place for the past year (2022/23); and - The planned risk management arrangements for 2023/24.
- i. Agree that on the basis of the information set out in this report, it can be concluded that arrangements for managing risk within the Council are sound.

**8. DRAFT ANNUAL GOVERNANCE STATEMENT 2022-23**

- 8.1 The Head of ARA outlined the purpose of the report which summarised the Council's corporate governance structures. The Chair commented that this annual piece of work was something which ran through all Council processes and was always a useful document for Members to read in order to understand the Council's operations.
- 8.2 The Chair also noted that the CIPFA and SOLACE principles were a key aspect to the Council's governance arrangements.
- 8.3 **RESOLVED that:-** The Audit and Governance Committee **APPROVE** the AGS 2022-23 (including the actions planned by the Council to further enhance good governance arrangements).

**9. ANNUAL REPORT OF THE AUDIT AND GOVERNANCE COMMITTEE**

- 9.1 The Chair introduced the report and explained that it was always presented after the end of the financial year. It was clarified that the 2020-21 accounts had been signed off and that the 2021-22 were forthcoming. The Head of the Finance and Resources confirmed that the draft for 2021-22 would be presented to the Committee at its September meeting.
- 9.2 **RESOLVED that:-**
- i. the Audit and Governance Committee Annual Report 2022-23 be agreed; and
  - ii. **RECOMMEND** to Council that the Annual Report 2022-23 be approved.

**10. ANNUAL AUDIT PLAN 2023-24**

- 10.1 The Head of ARA outlined internal audit's plan for the coming year and informed Members that it was always a flexible plan that that there was always room for new suggestions.
- 10.2 **RESOLVED that:-** The Audit and Governance Committee (1) Agree that the Internal Audit Plan for 2023/24 reflects the risk profile of the Council; and (2) Approves the Internal Audit Plan 2023/24 as detailed in Appendix A.

**11. ANNUAL REPORT OF THE HEAD OF INTERNAL AUDIT 2022-23**

**AUDIT AND GOVERNANCE COMMITTEE**  
**17.07.23**

The Head of ARA provided a verbal update that the Annual Report was being prepared and would be presented to the Committee at its September meeting.

**RESOLVED that:-** The Audit and Governance Committee **NOTE** the update.

**12. INTERNAL AUDIT ACTIVITY PROGRESS REPORT**

12.1 The Head of ARA provided the quarterly update on internal audit activity. He advised that a number of audits undertaken did not require an assurance level to be given. The Chair commented that the limited assurance provided regarding procurement was concerning and would need to be pursued. With regard to controls, he shared his view that some appeared weak. In response to a query as to whether higher level access to procurement systems could be accessed remotely, the Head of Finance and Resources confirmed that whilst this may be theoretically possible, there was no indication that systems had been accessed in this way. The reason for why a number of employees were granted access was on the basis that they may require at some point. He further confirmed that the system concerned tendering and not the approval of payments.

12.2 **RESOLVED that:-** The Audit and Governance Committee (1) Accept the progress against the Internal Audit Plan 2023-24; and (2) Accept the assurance opinions provided in relation to the effectiveness of the Council's control environment (comprising risk management, control and governance arrangements).

**13. TREASURY MANAGEMENT ANNUAL REPORT 2022/23**

**RESOLVED that:-** The Audit and Governance Committee **NOTE** the report.

**14. AUDIT AND GOVERNANCE COMMITTEE WORK PROGRAMME**

It was anticipated that the 2021-22 accounts would be available for consideration at the September Committee meeting with the accounts for 2022-23 following. The external auditors would also be invited to the September meeting.

**RESOLVED that:-** The Audit and Governance Committee **NOTE** the work programme.

**15. DATE OF NEXT MEETING**

Monday 11 September 2023 at 6.30pm in the Civic Suite, North Warehouse.

**Time of commencement: 6.30 pm hours**

**Time of conclusion: 7.50 pm hours**



**AUDIT AND GOVERNANCE COMMITTEE**  
**17.07.23**

**Chair**

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<b>Meeting:</b>	<b>Audit and Governance Committee</b>	<b>Date:</b>	<b>11<sup>th</sup> September 2023</b>
<b>Subject:</b>	<b>Annual Report of the Head of Audit Risk Assurance (ARA) 2022/23</b>		
<b>Report Of:</b>	<b>Head of ARA</b>		
<b>Wards Affected:</b>	<b>Not applicable</b>		
<b>Key Decision:</b>	<b>No</b>	<b>Budget/Policy Framework:</b>	<b>No</b>
<b>Contact Officer:</b>	<b>Piyush Fatania, Head of ARA</b>		
	<b>Email:</b>	<b>Tel: 01452 328883</b>	
	<a href="mailto:piyush.fatania@gloucestershire.gov.uk">piyush.fatania@gloucestershire.gov.uk</a>		
<b>Appendices:</b>	<b>A: Annual Report of the Head of ARA 2022/23</b>		

## FOR GENERAL RELEASE

### 1.0 Purpose of Report

- 1.1 To provide the Committee with an annual report on Internal Audit activity which meets the Head of ARA's annual reporting requirements, as set out in the Public Sector Internal Auditing Standards (PSIAS) 2017.

### 2.0 Recommendations

- 2.1 Audit and Governance Committee is asked to **RESOLVE** to:
- i. Assess, from the findings set out in the Annual Report of the Head of ARA 2022/23, whether it can take reasonable assurance that the internal control environment, comprising risk management, control and governance is operating effectively;
  - ii. Note that the performance of Internal Audit meets the required standards; and
  - iii. Note the Council wide counter fraud activity during 2022/23.

### 3.0 Background and Key Issues

- 3.1 The Accounts and Audit Regulations 2015 state that 'a relevant authority must undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account Public Sector Internal Auditing Standards or guidance'. During 2022/23, Internal Audit work was carried out in accordance with the Public Sector Internal Audit Standards (PSIAS) 2017 and the CIPFA Local Government Application Note for the UK PSIAS.

- 3.2 The PSIAS define Internal Audit as ‘an independent objective assurance and consulting activity designed to add value and improve an organisation’s operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes’.
- 3.3 To achieve full effectiveness, the scope of the Internal Audit service should provide an unrestricted range of coverage of the Council’s operations. Internal Audit should have sufficient authority to access such records, assets and personnel as are necessary for the proper fulfilment of responsibilities. These access rights are specified in the Internal Audit Charter and Code of Ethics, which have been approved by the Council.
- 3.4 The PSIAS requires the Head of ARA to ‘provide a written report to those charged with governance timed to support the Annual Governance Statement’. The content of the report is prescribed by the PSIAS which specifically requires Internal Audit to:
- i. Provide an opinion on the overall adequacy and effectiveness of the organisation’s internal control environment and disclose any qualifications to that opinion, together with the reasons for the qualification;
  - ii. Compare the actual work undertaken with the planned work, and present a summary of the audit activity undertaken from which the opinion was derived, drawing attention to any issues of particular relevance;
  - iii. Summarise the performance of the Internal Audit function against its performance measures and targets; and
  - iv. Comment on compliance with the PSIAS.
- 3.5 The Annual Governance Statement was approved by the Audit and Governance Committee on 17<sup>th</sup> July 2023.

#### **4.0 Social Value Considerations**

- 4.1 There are no Social Value implications as a result of the recommendations made in this report.

#### **5.0 Environmental Implications**

- 5.1 There are no Environmental implications as a result of the recommendations made in this report.

#### **6.0 Alternative Options Considered**

- 6.1 There are no alternative options that are relevant to this matter. Non completion of the Annual Report of the Head of ARA would lead to non-compliance with the PSIAS and the Council’s Constitution (see report section 7.2 and 7.3).

## **7.0 Reasons for Recommendations**

- 7.1 The role of the ARA Shared Service is to examine, evaluate and provide an independent, objective opinion on the adequacy and effectiveness of the Council's internal control environment, comprising risk management, control and governance. Where weaknesses have been identified, recommendations have been made to improve the control environment;
- 7.2 The PSIAS state the Head of ARA should report on the outcomes of Internal Audit work, in sufficient detail, to allow the Committee to understand what assurance it can take from that work and/or what unresolved risks or issues it needs to address; and
- 7.3 Consideration of reports from the Head of ARA on Internal Audit's performance during the year, including updates on the work of Internal Audit, is also a requirement of the Audit and Governance Committee's terms of reference (part of the Council Constitution).

## **8.0 Future Work and Conclusions**

- 8.1 In accordance with the PSIAS, and as reflected within the Audit and Governance Committee's work programme, Internal Audit Activity Progress Reports against the 2023/24 Risk Based Internal Audit Plan are scheduled to be presented to the Audit and Governance Committee within 2023/24.

## **9.0 Financial Implications**

- 9.1 No financial implications as a result of this report  
(Financial Services have been consulted in the preparation this report.)

## **10.0 Legal Implications**

- 10.1 There are no specific legal implications arising from the report recommendations.  
(Monitoring Officer has been consulted in the preparation this report.)

## **11.0 Risk and Opportunity Management Implications**

- 11.1 Failure to deliver an effective Internal Audit service will prevent an independent, objective assurance opinion from being provided to those charged with governance that the key risks associated with the achievement of the Council's objectives are being adequately controlled.

## **12.0 People Impact Assessment (PIA) and Safeguarding:**

- 12.1 A PIA is not necessary.

## **13.0 Community Safety Implications**

13.1 There are no Community Safety implications arising out of the recommendations made in this report.

#### **14.0 Staffing and Trade Union Implications**

14.1 There are no Staffing and Trade Union implications arising out of the recommendations made in this report.

**Background Documents:** [Accounts and Audit Regulations 2015](#)  
[Public Sector Internal Audit Standards \(PSIAS\) 2017](#)  
CIPFA Local Government Application Note for the UK PSIAS  
[Audit and Governance Committee's Terms of Reference](#)  
[Internal Audit 22-23](#)  
Internal Audit Progress Reports 2022/23 (presented at the  
[September 2022](#); [November 2022](#) [January 2023](#); [March 2023](#);  
and [July 2023](#) Audit and Governance Committee)..



# **ANNUAL REPORT OF THE HEAD OF AUDIT RISK ASSURANCE FOR 2022-23**

## **September 2023**

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## 1. Introduction

- 1.1 The Chartered Institute for Public Finance Accountants (CIPFA) and the Chartered Institute of Internal Auditors – UK and Ireland (CIIA) issued The Public Sector Internal Audit Standards (PSIAS).
- 1.2 The PSIAS define Internal Audit as “an independent, objective, assurance and consulting activity designed to add value and improve the Council’s operations. Internal Audit helps the Council to accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes”.
- 1.3 Alongside the PSIAS, a Local Government Application Note was also developed as sector-specific guidance for local government organisations. This provides practical guidance on how to apply the PSIAS in local government.
- 1.4 Internal Audit is a statutory service required by section 5 of the Accounts and Audit Regulations 2015 (the Regulations). The Internal Audit service for Gloucester City Council (the Council) is provided by Audit Risk Assurance (ARA) and complies with the above definition.
- 1.5 Internal Audit helps the Council to manage its risks and achieve its objectives. This includes reviewing processes and governance arrangements involved in producing the Council’s Statutory Accounts and the Annual Governance Statement (AGS). We report on these to management and the Audit and Governance Committee (the Committee).
- 1.6 The PSIAS require the Head of ARA to report annually to those charged with governance, Internal Audit’s opinion on the Council’s overall internal control, governance and risk environment arrangements. The opinion is based on the work undertaken by Internal Audit.
- 1.7 This report’s contents are prescribed by the PSIAS which requires Internal Audit to:
  - i. Provide an opinion on the overall adequacy and effectiveness of the organisation’s internal control environment and disclose any qualifications to that opinion, together with the reasons for the qualification;
  - ii. Compare planned work to that delivered and present a summary of the audit activity from which the opinion was derived, drawing attention to any issues of particular relevance;
  - iii. Summarise the performance of the Internal Audit service against its performance measures and targets; and
  - iv. Comment on compliance with the PSIAS.
- 1.8 By accepting the Annual Report of the Head of ARA, the Committee contributes to the fulfilment of its corporate governance responsibilities through the following:
  - i. Recognition of the overall adequacy and effectiveness of the management arrangements which safeguard the Council from significant business risks;

- ii. Providing a source of assurance for those charged with governance to produce a fair and representative AGS in the Statutory Accounts; and
  - iii. Ensuring Internal Audit assists the Council to maintain and develop its internal control and governance environment and improve the management of its risks.
- 1.9 Internal Audit in local government is required to operate in accordance with the PSIAS. In 2020 Internal Audit were externally assessed as being in “General Compliance” with the PSIAS. This is the highest level of compliance possible. We can confirm that Internal Audit has complied with the PSIAS during 2022/23.
- 1.10 This Annual Report is produced in accordance with, and conforms to, the core principles of the PSIAS.

## 2. Overall Opinion

- 2.1 My opinion is that overall, an Acceptable Level of assurance can be provided in connection with the Council’s internal control, governance and risk environment. The findings that have contributed to the level of assurance are those that have been reported to the Committee during 2022/23.
- 2.2 This opinion can be assessed using the following scale:
- i. “Substantial” assurance – all key controls are in place and working effectively with no exceptions or reservations. The Council has a low exposure to business risk;
  - ii. “Acceptable” assurance – all key controls in place and working effectively. There are reservations in connection with the operational effectiveness of some key controls. The Council has a low to medium exposure to business risk;
  - iii. “Limited” assurance – not all key controls are in place or are working effectively. The Council has a medium to high exposure to business risk; and
  - iv. “No” assurance – key controls are either not in place or are not working effectively. The Council has a high exposure to business risk.
- 2.3 In providing this opinion it should be noted that assurance can never be absolute. We can provide a reasonable level of assurance that there are no major weaknesses in risk management, control or governance arrangements. The matters raised in this report and our quarterly progress reports, are only those that were identified during our work. They are not necessarily a comprehensive statement of all the weaknesses that may exist or represent all the improvements required.
- 2.4 In arriving at this opinion, account has been taken of:
- i. The results of all Internal Audit work undertaken during 2022/23;
  - ii. Matters arising from the quarterly Internal Audit Progress Reports or other assurance providers to the Audit and Governance Committee;

- iii. The effects of any material changes in the Council's risk profile, objectives or activities;
  - iv. Whether any limitations have been placed on the scope of our work; and
  - v. Whether there have been any resource constraints which may have impacted on our ability to meet the needs of the Council.
- 2.5 In all cases, Internal Audit and officers develop actions to improve the management of risk and internal control. The effective implementation of these actions will be assessed as part of our follow-up work in 2023/24 and reported to the Committee.
- 2.6 We can confirm that there has been no actual or potential impairment to our independence and objectivity during the year. Our independence is safeguarded by the Head of ARA having full and unfettered access to the Managing Director and the Chair of the Committee.
- 2.7 Internal Audit has been free from interference in determining the scope of our work, performing it or communicating the results.
- 2.8 Internal Audit have had unfettered access to all of the Council's systems, operations, records and officers.
- 2.9 Internal Audit officers do not have any other roles in the Council.
- 2.10 The overall opinion on the internal control, governance and risk environment is based on our assessment of the key management arrangements and internal controls. This is the framework of internal controls required to provide management with confidence that the processes to achieve business objectives are:
- i. Adequate and effective for their purpose; and
  - ii. Minimise material business risk, both financial and non-financial.

### **3. Code of Ethics**

- 3.1 The PSIAS requires Internal Auditors in local government to conform to the CIIA's Code of Ethics as set out below. If individual Internal Auditors have membership of another professional body, then they must also comply with the relevant requirements of that organisation.
- 3.2 The purpose of the CIIA's Code of Ethics is to promote an ethical culture in the profession of Internal Auditing. This is necessary and appropriate for the profession of Internal Auditing, founded as it is, on the trust placed in its objective assurance about risk management, control and governance.
- 3.3 The Institute's Code of Ethics includes two essential components:
- i. Principles that are relevant to the profession and practice of Internal Auditing; and

- ii. Rules of Conduct that describe behavioural standards expected of Internal Auditors. These rules are an aid to interpreting the Principles into practical applications and are intended to guide the ethical conduct of Internal Auditors.

3.4 The components of the Code of Ethics are:

- i. Integrity – this establishes trust and thus provides the basis for reliance on the judgement of Internal Auditors;
- ii. Objectivity – Internal Auditors exhibit the highest level of professional objectivity in gathering, evaluating and communicating information about the activity or process being examined. Internal Auditors make a balanced assessment of all the relevant circumstances and are not unduly influenced by their own interests or by others in forming judgements;
- iii. Confidentiality – Internal Auditors respect the value and ownership of information they receive and do not disclose information without appropriate authority unless there is a legal or professional obligation to do so; and
- iv. Competency – Internal Auditors apply the knowledge, skills and experience needed in the performance of Internal Auditing services.

3.5 Internal Audit complied with the Code of Ethics and the Seven Principles of Public Life as defined by the Nolan Committee, at all times during 2022/23. The Principles are:

- i. Selflessness – holders of public office should act solely in terms of the public interest;
- ii. Integrity – holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships;
- iii. Objectivity – holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias;
- iv. Accountability – holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this;
- v. Openness – holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing;
- vi. Honesty – holders of public office should be truthful; and
- vii. Leadership – holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

#### 4. 2022/23

- 4.1 Our work during 2022/23 identified areas that have not affected the overall opinion above, but which the Council should be aware of and monitor.
- 4.2 Following the cyber incident in December 2021, ARA continuously engaged with senior management regarding the ICT incident position and the impact on the Council services. The Council experienced some disruption to service delivery. During 2022/23, the Internal Audit Plan was flexed to take account of the availability of the Council's various IT systems.
- 4.3 We maintained an up to date understanding of ICT and operational risks. We continued to support Council activities and service delivery following the ICT incident. This included support from the Counter Fraud Team (CFT) on the National Fraud Initiative (NFI) uploads and input into process and control discussions while ICT systems were not accessible.
- 4.4 The ICT incident meant a number of 2022/23 Internal Audit activities were deferred. These activities were considered for inclusion within the Internal Audit Plan 2023/24, following an updated risk assessment and consultation with senior management.
- 4.5 As the Council fully recovers from the ICT incident, there are a number of other challenges that it will need to be mindful of.
- 4.6 Financial resilience will need to be monitored closely, in light of the challenges posed by the volatility of inflation, utility prices and interest rates.
- 4.7 The Council continues to effectively manage its finances in order to minimise the risks from financial pressures. The risk of the Council issuing a Section 114 notice is low.
- 4.8 The recruitment and retention of staff is becoming an area of higher risk across local government. This is being exacerbated by increasing levels of sickness, particularly from stress related issues. The Council will need to monitor this issue to ensure that it has sufficient resource to successfully deliver its services.
- 4.9 Management should ensure that internal controls are maintained when there are staff changes, for example sickness, annual leave or when staff leave.
- 4.10 Following on from an independent review of the Council's risk management processes in 2021/22, ARA will facilitate the development of an Assurance Map. This will highlight all the areas from where the Council derives assurance. As such, this will enhance corporate governance by highlighting any gaps in assurance.
- 4.11 The risk of fraud is ever prevalent and nationally local authorities remain a target. Management should ensure that risk registers continue to address this risk for their departments and services. To this end Internal Audit regularly refresh counter fraud policies and maintain a web page to provide advice and assistance to anyone who wishes to report suspected fraud.
- 4.12 The CFT is a dedicated resource that enhances the Council's resilience against fraud.

- 4.13 Risk registers should be updated with risks as they are identified, and internal controls should be developed to minimise these. Risk registers should be reviewed following the issue of an Internal Audit report. This is to ensure that any pertinent risks identified in the report are reflected in the risk register.
- 4.14 It should be noted that for all of the observations reported to the Committee in Internal Audit Reports, Officers agreed actions to address concerns raised.
- 4.15 The Senior Management Team (SMT) is proactive in monitoring the Council's risks on a regular basis. Risk management and health and safety are standing items on (SMT) agenda. Any emerging risks and health and safety issues can be raised here enabling management to formulate appropriate and timely actions to manage these.

## **5. Conclusion**

- 5.1 This report provides an independent opinion on the adequacy and effectiveness of the internal control, governance and risk management processes.
- 5.2 The Senior Management Team are responsible for establishing, maintaining and owning appropriate risk management, internal control and governance arrangements.
- 5.3 Internal Audit plays a key role in providing independent assurance and challenge, advising the Council whether satisfactory arrangements are in place and operating effectively.
- 5.4 Internal Audit is not the only source of assurance for the Council. There are a range of external audit and inspection agencies as well as management processes which also provide assurance. These are set out in the Council's Local Code of Corporate Governance and its AGS.
- 5.5 Despite the cyber incident, ARA can confirm that 77% of the revised Internal Audit Plan for 2022-23 was delivered, against a target of 85%.
- 5.6 Furthermore, following each Internal Audit, a customer satisfaction questionnaire is sent to the Corporate Director, Head of Service or nominated officer. This is to gauge satisfaction of the service provided such as timeliness, quality and professionalism. Officers are asked to rate the service between Excellent, Good, Fair and Poor.
- 5.7 Internal Audit have a target of 80% of questionnaire responses to be assessed as "Good" or better. For 2022/23 this target was exceeded with a score of 100% of questionnaire responses reflecting Internal Audit as being a positive support to their service.
- 5.8 The above confirm that ARA continues to be provide an excellent service to the Council.

# Gloucester City Council

<b>Meeting:</b>	<b>Audit and Governance Committee</b>	<b>Date:</b>	<b>11<sup>th</sup> September 2023</b>
<b>Subject:</b>	<b>Internal Audit Activity Progress Report 2023/24</b>		
<b>Report Of:</b>	<b>Head of Audit Risk Assurance (ARA)</b>		
<b>Wards Affected:</b>	<b>Not applicable</b>		
<b>Key Decision:</b>	<b>No</b>	<b>Budget/Policy Framework:</b>	<b>No</b>
<b>Contact Officer:</b>	<b>Piyush Fatania, Head of ARA</b>		
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	<a href="mailto:piyush.fatania@gloucestershire.gov.uk">piyush.fatania@gloucestershire.gov.uk</a>	<b>01452 328883</b>	
<b>Appendices:</b>	<b>A: Internal Audit Activity Progress Report 2023/24</b>		

## FOR GENERAL RELEASE

### 1.0 Purpose of Report

- 1.1 To provide the Committee with an annual report on counter fraud activity in the Council, led by the Audit Risk Assurance (ARA) Counter Fraud Team.

### 2.0 Recommendations

- 2.1 It is recommended that the Committee:
- i. Assess, from the report's high level workstreams and the progress against the 2022/23 Action Plan, whether it can take reasonable assurance that the Counter Fraud Team is operating effectively;
  - ii. Note that £3,444 was recovered in-year. This includes monies relating to prior years' fraud investigations; and
  - iii. Note the Council's compliance with local government 'Annual Fraud Transparency Data' 2022-23 reporting.

### 3.0 Background and Key Issues

- 3.1 An effective Counter Fraud Team is a key part of the governance, risk management and internal control framework established by the Council. It provides independent investigation, counter fraud risk management, and fraud awareness (including training and resources) which underpins delivery of the Council's objectives and safeguards its limited resources.

### 4.0 Social Value Considerations

- 4.1 There are no Social Value implications as a result of the recommendations made in this report.

### 5.0 Environmental Implications



- 5.1 There are no Environmental implications as a result of the recommendations made in this report.

## **6.0 Alternative Options Considered**

- 6.1 No other options have been considered. The purpose of this report is to inform the Committee of the counter fraud work undertaken to date.

## **7.0 Reasons for Recommendations**

- 7.1 The role of the ARA Shared Service is to examine, evaluate and provide an independent, objective opinion on the adequacy and effectiveness of the Council's internal control environment, comprising risk management, control and governance. Where weaknesses have been identified, recommendations have been made to improve the control environment.
- 7.2 The PSIAS state the Head of ARA should report on the outcomes of Internal Audit work, in sufficient detail to enable the Committee to understand what assurance it can take from that work and what unresolved risks or issues it needs to address.
- 7.3 Consideration of reports from the Head of ARA on Internal Audit's work and performance during the year is also a requirement of the Audit and Governance Committee's terms of reference (part of the Council Constitution).

## **8.0 Future Work and Conclusions**

- 8.1 The Counter Fraud Team will provide updates on the Counter Fraud Team activities, including the number of closed cases and /or new cases, within the Internal Audit Activity Progress Reports.

## **9.0 Financial Implications**

- 9.1 There are no Financial implications as a result of the recommendations made in this report.

Financial Services have been consulted in the preparation this report.

## **10.0 Legal Implications**

- 10.1 The Counter Fraud Team's activity supports the best use of finance, ICT, human resources and property resources.
- 10.2 There are no direct legal implications arising from this report. (The Monitoring Officer has been consulted in the preparation this report).

## **11.0 Risk and Opportunity Management Implications**

- 11.1 Failure to deliver an effective counter fraud service will prevent an independent, objective assurance opinion from being provided to those charged with governance. That the key risks associated with the achievement of the Council's objectives are being adequately controlled.



## **12.0 People Impact Assessment (PIA) and Safeguarding:**

12.1 The Internal Audit service is delivered by ARA which is an Internal Audit and Risk Management Shared Service between Gloucester City Council, Stroud District Council and Gloucestershire County Council. Equality in service delivery is demonstrated by the team being subject to, and complying with, the Council's equality policies.

12.2 A PIA is not necessary.

## **13.0 Community Safety Implications**

13.1 There are no Community Safety implications as a result of the recommendations made in this report.

## **14.0 Staffing and Trade Union Implications**

14.1 There are no Staffing and Trade Union implications as a result of the recommendations made in this report.

### **Background Documents:**

[PSIAS](#) CIPFA Local Government Application Note for the UK PSIAS

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# Gloucester City Council



# ARA Counter Fraud Team 2022-23 Annual Report August 2023

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**1. Introduction**

- 1.1 The Counter Fraud Team (CFT) sits within the Audit Risk Assurance (ARA) shared service. It comprises of three fully qualified counter fraud and risk management specialists.
- 1.2 This summary document details the CFT’s end of year progress against high level workstreams for the Council.
- 1.3 The report covers the following areas:
  - Referral and case statistics;
  - High level workstreams identified by the original plan;
  - Individual actions identified by the original plan; and
  - Annual fraud transparency data 2022/23

**2. Referral and Case Statistics**

- 2.1 For the Council, the 2022/23 financial year was significantly affected by the cyber incident in December 2021. Most Council resources were dedicated to restoring Council systems and services. This inevitably affected the number of referrals made into the CFT; both direct from Council and in terms of NFI matches generated.
- 2.2 Information recorded on the CFT’s case management system (OPUS) shows that within 2022-23 there were:

**3 new referrals relating to GCiC**

2	Referrals resolved following triage, initial investigation, provision of advice
1	Referral converted into a case (investigation under Terms of Reference)

**11 cases worked on (including carried forward from prior years)**

1	2022/23 cases resulted and closed in-year
8	Pre-2022/23 cases resulted and closed in-year
2	Pre-2022/23 cases carried forward to 2023/24 (both since closed)

- 2.3 Not all investigations (for example conduct, non-compliance and ethics issues) can have an assessed value attached to them or result in the recovery of monies. CFT investigations, analytics and consultative work may add value in other ways such as providing assurance to members and residents, reducing Council vulnerabilities and mitigating risk.
- 2.4 In addition to the above, counter fraud advice and alerts are routinely provided outside of the creation of referrals and cases. 32 intelligence alerts were provided in 2022/23.
- 2.5 In addition to the above, counter fraud advice and alerts are routinely provided outside of the creation of referrals and cases.

### 3. High Level Workstreams

2.6 High level workstreams cover the core business of the CFT. They must necessarily be the CFT's priority.

2.7 It should be noted that many of the areas marked 'completed' are repeated annually.

Workstream	Description	Progress
Corporate fraud investigations	All internal staff and contractor fraud All external threats to the partners and client including procurement fraud and bribery  In line with the CFT Case Acceptance Criteria and Matrix, and subject to an agreed Terms of Reference.	Completed:  - See paragraph 2 above for the detailed statistics.
Other investigations	Any referred fraud, corruption, bribery, and error investigations: for example, referred National Fraud Initiative, Right to Buy or Council Tax frauds.	Completed
Policy development and review	All fraud related policies, guidance, working procedures and processes. The CFT ensures that these reflect best practice and legislative requirements, whilst contributing to the overall objectives of the Council.	Internal CFT policies:  - Stakeholder management plan; - Communications Plan; - Action Plan; - Fraud Risk Management; and - Counter Fraud Strategy, Statement and Policy: minor updates.
Fraud alerts and intelligence	The CFT will share targeted and relevant information about the latest fraud news, trends, risks, and mitigations. Intelligence will be gathered from the CFT's professional memberships, obtained via formal and informal networks, or accrued from other reputable public and private sector organisations.	Completed;  - 32 alerts and intelligence notices issued to GCiC.
Fraud awareness and training	The provision of annual materials and communications around International Fraud Awareness Week (IFAW); delivering bespoke training presentations or workshops upon request.	Completed;  - IFAW campaigns; - Procurement training session developed and delivered; - Delivered five Police and Criminal Evidence (PACE) Interview training sessions; - Provided Counter fraud awareness; - Issued seasonal (Christmas) counter fraud communications;

		<ul style="list-style-type: none"> <li>- CFT Qualifications Achieved: CIPFA Certificate in Fraud Risk Management (FRM);</li> <li>- Benchmarking;</li> <li>- Liverpool City Council FRM liaison</li> </ul>
<p>Fraud advice and support</p>	<p>The CFT can contribute to every aspect of its partner and client activity, for example producing Fraud Risk Assessments, conducting data analytics, or simply providing formal or informal advice. Advice may vary between fraud risk, compliance, prevention, detection, money laundering, and other criminal activity as well as misconduct and misuse of public funds. In all cases the CFT will consider and recommend appropriate actions such as disciplinary, asset or financial recovery, internal investigation, or law enforcement referral.</p>	<p>Completed:</p> <ul style="list-style-type: none"> <li>- Member of the newly formed Multi Agencies Against Fraud (MAAF) group.</li> </ul>

#### 4. Progress against Action Plan

2.8 Action Plan items are strategic in nature and aligned to the Fighting Fraud and Corruption Locally (FFCL) 2020 strategy for local government. They represent work beyond the core business.

2.9 Key for action plan tables:

- GREEN** = completed
- AMBER** = partially completed
- RED** = not started
- WHITE** = pending

#### FFCL Pillar - Govern

Robust arrangements and executive support ensure anti-fraud, bribery and corruption measures are fully embedded and working.

Area	Objective	Method	Outcome	Completion
Document CFT processes	Conduct annual review of counter fraud policies	Produce an ARA CFT Annual CF Action Plan (this document)	Plan produced, awaiting approval	Q3
Counter Fraud Case Management	Review Case Management System and update	Review and improve CFT's OPUS case management system, to include more streamlined and targeted reporting into partners and clients	Not started/ongoing.	Q4
Stakeholder Management Plan	Clarify CFT's reporting responsibilities	Produce a Stakeholder Management Plan detailing what reporting requirements there are and to whom	Draft document completed, Head of ARA to review.	
Signposting	Maintain webpages and ensure referral routes are accessible	CFT are currently compiling a new CFT Intranet page for SDC. CFT will review the intranet pages for the other partners and client following this	New counter fraud intranet pages	Q4
Whistleblowing processes and training	Update whistleblowing processes to record and manage all reports	Design new holistic process then evolve, improve, and sign off that pilot process via working group	Pending Gloucestershire County Council pilot	Q4
Risk Management	Maintain comprehensive fraud risk registers	Update fraud risks, controls, and owners on an annual basis. This will be based upon our new Fraud Risk Management model (see below)	Fraud risk registers for each partner and client	Pending new framework
	Ensure fraud risk is full considered across ARA	Feed into the annual ARA Internal Audit planning process	Comprehensive annual Internal Audit Plan	Completed
Training	Maintain the professional expertise of CFT staff	Identifying and attending relevant training courses and webinars.	Additional Fraud Risk Management training	Q4



**FFCL Pillar - Acknowledge**

Accessing and understanding fraud risks | Committing the right support to tackling fraud and corruption | Demonstrating a robust anti-fraud response | Communicating the risks to those charged with governance.

Area	Objective	Method	Outcome	Completion
Fraud Awareness	Promote the Counter Fraud policies amongst all stakeholders to increase awareness	Promotion of International Fraud Awareness Week (IFAW)		Q3
	Deliver fraud awareness training amongst officers, and members	Provide a minimum of one awareness session in period. Allows both the ability to add to the zero-tolerance culture and raises the profile of the department across the councils and businesses.		EOY
	Attend appropriate strategic meetings.	Identifying the most appropriate meeting(s) for CFT to attend. In conjunction with receiving feedback from other ARA staff	Attendance at Audit and Governance Committee (AGC) Meetings.	Q4
External Reporting	Ensure all strategic and compliance reporting is transparent and completed on time.	Fulfil all central government reporting requirements such as Transparency Data. Contribute to industry and government consultations. Respond to Freedom of Information requests.	Compliance	Ongoing

**FFCL Pillar - Prevent**

Making the best use of information and technology | Enhancing fraud controls and processes | Developing a more effective anti-fraud culture | Communicating anti-fraud activity and successes

Area	Objective	Method	Outcome	Completion
Comms	Deliver fraud communications in line with a communications strategy under development (internal and external)	Supply suitable material to promote International Fraud Awareness Week. Supply two Counter Fraud articles per year for publication and use by the Council.	Counter Fraud articles supplied to GCiC on 26/04/22	
Intelligence Alerts	Issue fraud and scam alerts from reliable sources such as CIFAS and NAFN	Provide appropriate and targeted real-time fraud alerts to the relevant partners and clients.		Ongoing
Fraud Risk Management	Improve the Fraud Risk Management (FRM) process undertaken by CFT on behalf of the Council.	Deliver new FRM framework. Produce and approve an FRM report which sets out a new regime for FRM across each partner and client, founded on annual fraud risk assessment plans.	Report ready for Head of ARA, S151 and Monitoring Officers and the AGC.	Q4
	Annual fraud risk assessment exercise	Develop and conduct an annual fraud risk assessment exercise per partner and client and report on findings.		Pending new framework
	Ad hoc fraud risk assessments	Encourage projects, procurements, policy authors and process changes to seek out CFT input to help de-risk their workstream.		Pending new framework
Control Measures	Provide an advisory service	Encourage service areas, directorates and ARA Portfolio leads to approach the CFT for advice and guidance in relation to potential irregularities, fraud risks and assistance with new procedures and processes in service areas, to mitigate fraud risks.	Data Analytics, ad hoc reports.	Ongoing
	Strengthen the internal control environment	Any suspected or significant controls weaknesses or fraud risks that are identified by an investigation or audit are subject to an ARA report and appropriate recommendations. ARA will follow up recommendations made in investigation reports, audit reports, data analytics work, and annual or ad hoc fraud risk assessments.	Recommendations agreed and actioned.	Ongoing
Risk Escalation	Ensuring that newly identified risks and control failures are communicated to people in a position to act on them.	Liaising and sharing information with ARA auditors and Risk Owners (fraud risk registers) where appropriate.		Ongoing
Data Analytics	Maximise proactive investigative opportunities from internal data matching and data analytics. Provide actionable and impactful recommendations from reactive (referred) data analysis work.	Utilise internal data matching to develop more data led pro-active investigations and allow the CFT to have a greater ability to investigate and adopt a preventative measures approach. To be achieved using tools such as GBG Investigate and Idea.	Improvement	Ongoing
National Fraud Initiative (NFI) Data Matching	Maximise proactive investigative opportunities from NFI	The CFT will co-ordinate this exercise for the partners. Datasets include areas such as, procurement, Payroll and Single Person Discount.		Ongoing (biennial cycle)

**FFCL Pillar - Pursue**

Prioritising fraud recovery and civil sanctions | Developing capability and capacity to deter offenders | Collaborating across geographical and sectoral boundaries | Learning lessons and closing the gaps.

Area	Objective	Method	Outcome	Completion
Investigations	Conduct successful investigations	Investigate suspected frauds, subject to an agreed Terms of Reference. Effectively pursue fraudsters by risk assessing and reacting to all instances of internal and external fraud, corruption, or bribery.		
National Fraud Initiative (NFI)	Facilitate NFI enquiries from within the Council and from external third parties	Help coordinate investigations referred to the CFT by the relevant teams processing NFI matches.		
Investigation Techniques	Obtain capability to use powers under Investigatory Powers Act (IPA) 2016	Consult with ICT to ensure that required software is added to CFT members laptops to enable access to NAFN's online IPA Application process	Ability and infrastructure to obtain communications data where appropriate for CFT investigations	Completed
	Maintain and Increase the PACE Interviewing Skills of Council staff who undertake PACE Interviews	CFT to run a one-day Interview Skills workshop with staff who conduct interviews under caution (IUCs)	Multiple interview skills workshops delivered.	Completed
Recovery	Initiate financial investigations under the Proceeds of Crime Act 2002 in relation to all frauds (where appropriate) to ensure that criminals do not profit from their actions.	CFT will engage Trading Standards Financial Investigators to assist investigations, where appropriate. Other recoveries may be made through salary sacrifice or invoicing. The debt collection team chases non-payment.		

**FFCL Pillar - Protect**

Recognising the harm that fraud can cause to partners, clients and in the community | Protecting partners, clients and communities from fraud, bribery, corruption, and irregularity.

Area	Objective	Method	Outcome	Completion
All	The above actions will ensure every element of the 'protect' pillar are considered and addressed			

## 5. Local Government Transparency Return 2022/23

- 2.10 The report above covers work carried out by the CFT. The Council also has access to the services of the Counter Fraud and Enforcement Unit. The CFT reports annually on this combined counter fraud function in accordance with the Local Government Transparency Code 2015:

### **(7b) Local Government Transparency Code 2015**

#### **Introduction**

This Code is issued to meet the Government's desire to place more power into citizens' hands to increase democratic accountability and make it easier for local people to contribute to the local decision making process and help shape public services.

Transparency is the foundation of local accountability and the key that gives people the tools and information they need to enable them to play a bigger role in society. The availability of data can also open new markets for local business, the voluntary and community sectors and social enterprises to run services or manage public assets.

#### **Detecting and preventing fraud (taken from Annex B of code)**

Tackling fraud is an integral part of ensuring that taxpayers' money is used to protect resources for frontline services. The cost of fraud to local government was estimated within the FFCL strategy in 2020 as £2.1 billion a year although it was thought to be underestimated at the time. In 2017 the Annual Fraud Indicator produced by Crowe Clark Whitehill, in collaboration with Experian and the Centre for Counter Fraud studies at the University of Portsmouth, estimated that the true figure may be as high as £7.8bn from a total of £40.4bn for the public sector as a whole. Every pound lost to fraud is a pound not spent on supporting local communities and is money that can be better used to support the delivery of front-line services and make savings for local taxpayers.

A culture of transparency should strengthen counter-fraud controls. The Code makes it clear that fraud can thrive where decisions are not open to scrutiny and details of spending, contracts and service provision are hidden from view. Greater transparency, and the provisions in this Code, can help combat fraud.

Local authorities must annually publish the following information about their counter fraud work (as detailed for the Council) in the table overleaf:

Question	Council Response
Number of occasions they use powers under the Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014, or similar powers.	0
Total number (absolute and full time equivalent) of employees undertaking investigations and prosecutions of fraud.	The Council has access to 2.7 FTE fraud investigators in the Counter Fraud Team (CFT) as part of the ARA shared service.
Total number (absolute and full time equivalent) of professionally accredited counter fraud specialists.	The Council has access to 2.7 FTE fraud investigators in the CFT as part of the ARA shared service.
Total amount spent by the authority on the investigation and prosecution of fraud.	Approximately £6,588 in staff time from CFT.  Unknown costs related to staff employed by the Council.
Total number of fraud cases investigated.	0
Total number of cases of irregularity investigated.	2

2.11 In addition to the above, it is recommended that local authorities should go further than the minimum publication requirements set out above (as detailed for the Council) in the table below:

Question	(a) Fraud	(b) Irregularity
Total number of occasions on which a) fraud and b) irregularity was identified.	0	0
Total monetary value of a) the fraud and b) the irregularity that was detected.	£0	£0
	(Excluding ongoing cases where value is currently not known)	
Total monetary value of a) the fraud and b) the irregularity that was recovered.	£0	£3,444
	(Includes monies recovered in year but related to previous years)	



# Gloucester City Council

<b>Meeting:</b>	<b>Audit and Governance Committee</b>	<b>Date:</b>	<b>11<sup>th</sup> September 2023</b>
<b>Subject:</b>	<b>Internal Audit Activity Progress Report 2023/24</b>		
<b>Report Of:</b>	<b>Head of Audit Risk Assurance (ARA)</b>		
<b>Wards Affected:</b>	<b>Not applicable</b>		
<b>Key Decision:</b>	<b>No</b>	<b>Budget/Policy Framework:</b>	<b>No</b>
<b>Contact Officer:</b>	<b>Piyush Fatania, Head of ARA</b>		
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<b>Appendices:</b>	<b>A: Internal Audit Activity Progress Report 2023/24</b>		

## FOR GENERAL RELEASE

### 1.0 Purpose of Report

- 1.1 To inform the Committee of the Internal Audit activity progress in relation to the Internal Audit Plan 2023/24.

### 2.0 Recommendations

- 2.1 Audit and Governance Committee is asked to **RESOLVE** to:
- i. Accept the progress against the Internal Audit Plan 2023/24; and

### 3.0 Background and Key Issues

- 3.1 The Committee approved the Internal Audit Plan 2023/24 at the 6<sup>th</sup> March 2023 Committee meeting. In accordance with the Public Sector Internal Audit Standards 2017 (PSIAS), this report (through **Appendix A**) details the outcomes of Internal Audit work carried out in accordance with the approved Plan.

- 3.2 The Internal Audit Activity Progress Report 2023/24 at **Appendix A** summarises:

- i. The progress and final position on the Internal Audit Plan 2023/24, including the assurance opinions on the effectiveness of risk management and control processes;
- ii. The outcomes of the delivered Internal Audit Plan 2023/24 activity; and
- iii. Special investigations/counter fraud activity.

- 3.3 The report is the second report in relation to the Internal Audit Plan 2023/24.

#### **4.0 Social Value Considerations**

4.1 There are no Social Value implications as a result of the recommendations made in this report.

#### **5.0 Environmental Implications**

5.1 There are no Environmental implications as a result of the recommendations made in this report.

#### **6.0 Alternative Options Considered**

6.1 No other options have been considered. The purpose of this report is to inform the Committee of the Internal Audit work undertaken to date and the assurance opinions provided. Non-completion of Internal Audit Activity Progress Reports would lead to non-compliance with the PSIAS and the Council Constitution (see report section 7.2 and 7.3).

#### **7.0 Reasons for Recommendations**

7.1 The role of the ARA Shared Service is to examine, evaluate and provide an independent, objective opinion on the adequacy and effectiveness of the Council's internal control environment, comprising risk management, control and governance. Where weaknesses have been identified, recommendations have been made to improve the control environment.

7.2 The PSIAS state the Head of ARA should report on the outcomes of Internal Audit work, in sufficient detail to enable the Committee to understand what assurance it can take from that work and what unresolved risks or issues it needs to address.

7.3 Consideration of reports from the Head of ARA on Internal Audit's work and performance during the year is also a requirement of the Audit and Governance Committee's terms of reference (part of the Council Constitution).

#### **8.0 Future Work and Conclusions**

8.1 Internal Audit Activity Progress Reports against the 2023/24 Risk Based Internal Audit Plan are scheduled to be presented to the Audit and Governance Committee within 2023/24. This is in accordance with the PSIAS and as reflected within the Audit and Governance Committee work programme.

8.2 The first Internal Audit Progress Report 2023/24 will be presented to the 11<sup>th</sup> September 2023 Audit and Governance Committee.

#### **9.0 Financial Implications**

9.1 There are no Financial implications as a result of the recommendations made in this report.

Financial Services have been consulted in the preparation this report.



## **10.0 Legal Implications**

- 10.1 Monitoring the implementation of Internal Audit recommendations assists the Council to minimise risk areas and thereby reduce the prospects of legal challenge.

The Monitoring Officer has been consulted in the preparation this report.

## **11.0 Risk and Opportunity Management Implications**

- 11.1 Failure to deliver an effective Internal Audit service will prevent an independent, objective assurance opinion from being provided to those charged with governance. That the key risks associated with the achievement of the Council's objectives are being adequately controlled.

## **12.0 People Impact Assessment (PIA) and Safeguarding:**

- 12.1 The Internal Audit service is delivered by ARA which is an Internal Audit and Risk Management Shared Service between Gloucester City Council, Stroud District Council and Gloucestershire County Council. Equality in service delivery is demonstrated by the team being subject to, and complying with, the Council's equality policies.
- 12.2 A PIA is not necessary.

## **13.0 Community Safety Implications**

- 13.1 There are no Community Safety implications as a result of the recommendations made in this report.

## **14.0 Staffing and Trade Union Implications**

- 14.1 There are no Staffing and Trade Union implications as a result of the recommendations made in this report.

## **Background Documents:**

[PSIAS](#)

CIPFA Local Government Application Note for the UK PSIAS

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# **PROGRESS REPORT ON INTERNAL AUDIT ACTIVITY**

## **August 2023**

## **1. Introduction**

- 1.1 The Council's Internal Audit service is provided by Audit Risk Assurance (ARA) under a Shared Service agreement between Gloucestershire County Council, Stroud District Council and Gloucester City Council.
- 1.2 ARA provides these services in accordance with the Public Sector Internal Audit Standards 2017 (PSIAS) which represent the "proper Internal Audit practices". The standards define the way in which the Internal Audit service should be established and undertake its operations.
- 1.3 In accordance with the PSIAS, the Head of Internal Audit is required to regularly provide progress reports on Internal Audit activity to management and the Audit and Governance Committee. This report summarises:
  - i. The progress against the Internal Audit Plan 2023/24;
  - ii. The outcomes of the 2023/24 Internal Audit activity delivered up to 22<sup>nd</sup> August 2023; and
  - iii. Special investigations and counter fraud activity.
- 1.4 Internal Audit plays a key role in providing independent assurance and advice to the Council that these arrangements are in place and operating effectively. However, it should be emphasised that officers of the Council are responsible for establishing and maintaining appropriate risk management processes, control systems (financial and non-financial) and governance arrangements.

## **2. Summary of 2023-24 Internal Audit work delivered up to August 2022**

- 2.1 No reports have been issued since the previous Audit and Governance Committee in July 2023.

## **3. Counter Fraud Update – Summary of Counter Fraud Activities**

### **Current Year Counter Fraud Activities**

- 3.1 To date in 2023/24 there have been two new referrals made to the ARA Counter Fraud Team (CFT).
- 3.2 Both cases are ongoing, and the outcomes will be reported to the Committee on their completion.
- 3.3 Not all investigations (for example conduct, non-compliance and ethics issues) can have an assessed value attached to them or result in the recovery of monies. CFT investigations, analytics and consultative work may add value in other ways such as providing assurance to members and residents, reducing Council vulnerabilities and mitigating risk.

- 3.4 It should be noted that many of the cases referred to the CFT involve intricate detail and, sometimes, police referral. This invariably results in a delay before the investigation can be classed as closed and the summary outcome reported to Committee.
- 3.5 In addition to the above, counter fraud advice and alerts are routinely provided outside of the creation of referrals and cases.

### **Whistleblowing**

- 3.6 The CFT is currently working with the Monitoring Officer to review the Council's whistleblowing reporting and recording process. Once embedded into business as usual, these changes will address the recommendations raised in the 2021 Internal Audit report and enhance the existing processes.

### **Previous Years' Referrals**

- 3.7 There is one ongoing case that concerns licensing (animal welfare) related issues. A Newton Hearing had been set for 1<sup>st</sup> June 2023 at Gloucester Crown Court. However, the CFT has learned that this has now been postponed until September 2023. This is to clarify issues between the prosecution and defence before sentencing can take place.

### **National Fraud Initiative (NFI)**

- 3.8 The CFT continues to support the NFI which is a biennial data matching exercise administered by the Cabinet Office. The data matching reports for the 2022-23 exercise have been released for review.
- 3.9 Full details of the NFI timetables can be found using the link available on GOV.UK website – [www.gov.uk/government/publications/national-fraud-initiative-timetables](https://www.gov.uk/government/publications/national-fraud-initiative-timetables).
- 3.10 Examples of NFI data sets include housing, insurance, payroll, creditors, council tax, electoral register and licences for market trader or operator, taxi drivers and personal licences to supply alcohol.
- 3.11 Not all matches are investigated. Where possible, all recommended or high fraud risk matches are reviewed by either the CFT or the appropriate service area within the Council.

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## Gloucester City Council 2023-24 Internal Audit Progress Report - September 2023

Ref	Plan Quarter	Actual Quarter	Dept.	Audit	Comment	Risk	Status Now	Status Last Quarter	Comments
<b>Completion of 2022-23 Work</b>									
1	2	2	Policy and Resources	Agency Staff	Assurance	Medium	Field Work Started	Field Work Started	Fieldwork in progress. <u>Update September 2023:</u> the audit was started early 2023 but was subsequently paused. Fieldwork has resumed in July 2023.
2	2	3	Communities	Housing Strategy	Assurance	High	Final Report Issued	Final Report Issued	Final report issued
3	2	3	ICT	ICT Audits	Assurance	High	Field Work Started	Field Work Started	The Information Governance Board (IGB) has requested ARA feedback on draft ICT policies. This work is in progress.
4	3	3	Council Wide	Procurement	Assurance	High	Final Report Issued	Final Report Issued	Final report issued June 2023.
5	NEW	4	Policy and Resources	Test and Trace Support Payment Scheme	Assurance	High	Final Report Issued	Final Report Issued	Final report issued June 2023
6	NEW	1	Place	Section 31 Biodiversity Net Gain	Assurance	High	Final Report Issued	Final Report Issued	Grant audit. Notification of audit requirement received March 2023.
<b>Work Planned for 2023-24</b>									
7	Page 47	N/A	Communities	High Street Heritage Action Zone	Assurance	Medium	Replaced by UK Shared Prosperity Fund audit	Planned	Review the systems for processing applications and monitoring grant expenditure. Review the application process, to assess compliance with the guidance, and to establish the level of monitoring undertaken once the grant has been awarded. <u>Update September 2023:</u> This audit was completed in 2022. It has been replaced by the UK Shared Prosperity Fund audit (added below) as agreed with management. Fieldwork for this audit has started.
8	NEW	2	Place	UK Shared Prosperity Fund	Assurance	High	Field Work Started	N/A	<u>Update September 2023:</u> Audit added to the plan (Q2) as agreed with management.
9	NEW	2	ICT	Patch Management	Assurance	High	Field Work Started	N/A	<u>Update September 2023:</u> This audit started in August 2023.
10	4	2	Council Wide	Leavers Processes (Off-Boarding)	Assurance	Medium	Field Work Started	Planned	This review to assess the effectiveness of arrangements for managing the process for when employees leave the Council. <u>Update September 2023:</u> This audit was started in August 2023 as agreed with Management.

## Gloucester City Council 2023-24 Internal Audit Progress Report - September 2023

Ref	Plan Quarter	Actual Quarter	Dept.	Audit	Comment	Risk	Status Now	Status Last Quarter	Comments
11	4	2	Policy and Resources	IR35 (Off Payroll Working)	Assurance	Medium	Field Work Started	Planned	To review the systems, policies and procedures in place to ensure that new and existing off-payroll workers are identified, assessed and paid in accordance with IR35 requirements. <u>Update September 2023:</u> This audit was started in August 2023 as agreed with Management.
12	3	2	Policy and Resources	Payroll	Assurance	Financial audit	Field Work Started	Planned	Following the cyber incident in 2021-22, assess veracity of internal control in this area. <u>Update September 2023:</u> This audit started in August 2023 as agreed with management.
13	NEW	2	Council Wide	Assurance mapping	Consultancy	Medium	Field Work Started	N/A	<u>Update September 2023:</u> This consultancy piece of work started in July 2023.
14	2	N/A	Culture	Blackfriars Turnover Certificate	Assurance	Sign-off	Planned	Planned	Assess whether turnover values stated to English Heritage are in accordance with and supported by documents and records held by the Council.
15	Page 48	N/A	Communities	Health and Safety Follow-up	Assurance	High	Planned	Planned	Assess the effectiveness of the new framework for managing health and safety risks across the Council. <u>Update September 2023:</u> This audit has been moved from Q1 to Q2 at Management's request.
16	2	N/A	Place	City Growth Strategies	Consultancy	Consultancy	Planned	Planned	ARA to engage with management to confirm updated risk position and consultancy need.
17	2	N/A	Council Wide	Employee Wellbeing and Retention	Consultancy	Consultancy	Planned	Planned	Consultancy on employee wellbeing themes: Employee training and retention schemes; A review of the Mental Health & Wellbeing Policy against best practice and industry leaders; and A review of the Agile Working Policy
18	NEW	N/A	ICT	Back-ups	Assurance	High	Planned	N/A	<u>Update September 2023:</u> This ICT audit is planned for Q3 as agreed with management.
19	3	N/A	Policy and Resources	Treasury Management	Assurance	Financial audit	Planned	Planned	Following the cyber incident in 2021-22, assess veracity of internal control in this area.
20	3	N/A	Policy and Resources	Housing Benefits & Council Tax Reduc	Assurance	Financial audit	Planned	Planned	Following the cyber incident in 2021-22, assess veracity of internal control in this area.



## Gloucester City Council 2023-24 Internal Audit Progress Report - September 2023

Ref	Plan Quarter	Actual Quarter	Dept.	Audit	Comment	Risk	Status Now	Status Last Quarter	Comments
21	3	N/A	Policy and Resources	National Non Domestic Rates (NNDR)	Assurance	Financial audit	Planned	Planned	Following the cyber incident in 2021-22, assess veracity of internal control in this area.
22	3	N/A	Place	Planning Performance and Income	Assurance	Medium	Planned	Planned	Assess the arrangements in accepting, validating, publicising and determining planning applications. <u>Update September 2023:</u> This audit has been moved from Q1 to Q3 at Management's request.
23	3	N/A	Place	First Homes	Assurance	Medium	Planned	Planned	Discussions ongoing with service leads. Audit timing and need dependent on legislation update. <u>Update September 2023:</u> This audit has been moved from Q2 to Q3 as agreed with management.
24	3	N/A	Communities	Homeless Pathway	Assurance	Medium	Planned	Planned	Review the effectiveness of the systems for processing applications and monitoring homelessness cases <u>Update September 2023:</u> This audit has been moved from Q2 to Q3 as agreed with Management.
25	3	N/A	Culture	Culture Grants (Guildhall and Museum)	Assurance	Medium	Planned	Planned	<u>Update September 2023:</u> This audit has been moved from Q2 to Q3 as agreed with Management.
26	3	N/A	Culture	Statues and Monuments	Consultancy	Consultancy	Planned	Planned	Support on the Cultural Strategy and Statues and Monuments consultancy. Deferred at management's request and the updated risk position. <u>Update September 2023:</u> This consultancy piece of work has been moved from Q1 to Q3 as agreed with management.
27	3	N/A	Policy and Resources	Sickness and Absence	Assurance	Medium	Planned	Planned	Review of Sickness and Absence policy and procedures
28	NEW	N/A	ICT	Third Party Hosting	Assurance	High	Planned	N/A	<u>Update September 2023:</u> This ICT audit is planned for Q3 as agreed with management.
29	4	N/A	Communities	CIL and Section 106 Agreements - Follow Up	Assurance	Follow-up	Planned	Planned	<u>Update September 2023:</u> The scope will be a follow-up of the actions agreed in the previous S106 audit report (CIL will not be in scope) as agreed with Management.
30	4	N/A	Policy and Resources	Creditors	Assurance	Financial audit	Planned	Planned	Following the cyber incident in 2021-22, assess veracity of internal control in this area. <u>Update September 2023:</u> This audit has been moved from Q3 to Q4 at Management's request.

## Gloucester City Council 2023-24 Internal Audit Progress Report - September 2023




Ref	Plan Quarter	Actual Quarter	Dept.	Audit	Comment	Risk	Status Now	Status Last Quarter	Comments
31	4	N/A	Policy and Resources	Debtors	Assurance	Financial audit	Planned	Planned	Following the cyber incident in 2021-22, assess veracity of internal control in this area. <u>Update September 2023:</u> This audit has been moved from Q3 to Q4 at Management's request.
32	4	N/A	Policy and Resources	Main Accounting Systems, Budgetary Control and Bank Reconciliations	Assurance	Financial audit	Planned	Planned	Following the cyber incident in 2021-22, assess veracity of internal control in this area. <u>Update September 2023:</u> This audit has been moved from Q3 to Q4 at Management's request.
33	4	N/A	Climate	Climate and Carbon Reduction	Assurance	High	Planned	Planned	Audit scope to focus on governance arrangements. <u>Update September 2023:</u> This audit has been moved from Q2 to Q4 as agreed with Management.
34	4	N/A	Council Wide	Contract Management	Assurance	High	Planned	Planned	Procurement review to be prioritised. Contract management risk assessment and review need to be updated. <u>Update September 2023:</u> This audit has been moved from Q2 to Q4 at Management's request.
35	4	N/A	Culture	Cultural Recovery Fund	Assurance	Medium	Replaced by Risk Management audit follow-up	Planned	<u>Update September 2023:</u> 3 audits were completed in 21/22 for the Cultural recovery fund (covering the 3 rounds). The fund is now closed. The audit has been replaced by the Risk management follow-up audit (added below) as agreed with management.
36	NEW	N/A	Council Wide	Risk Management audit - Follow-up	Assurance	High	Planned	N/A	<u>Update September 2023:</u> Audit added to the plan (Q4) as agreed with management.

Gloucester City Council 2023-24 Internal Audit Progress Report - September 2023

Ref	Plan Quarter	Actual Quarter	Dept.	Audit	Comment	Risk	Status Now	Status Last Quarter	Comments
37	4	N/A	Policy and Resources	Asset Management Strategy	Assurance	High	Planned	Planned	Three main lines of consideration: (i) Do the Strategy, policies and guidance, including roles and responsibilities, provide for effective management of assets. (ii) Are processes, systems and tools to manage assets effective and efficient to ensure complete and timely recording, capitalization, depreciation and tagging of assets, tracking of internal and external asset movements and periodic verification and reconciliation of assets. (iii) Are assets adequately safeguarded and utilized as intended
38	NEW	N/A	ICT	Tiering of Administrator Accounts	Assurance	High	Planned	N/A	<u>Update September 2023:</u> This ICT audit is planned for Q4 as agreed with management.
39	Page 51	N/A	Policy and Resources	Fixed Assets & Capital Accounting	Assurance	High	Planned	Planned	Following the cyber incident in 2021-22, assess veracity of internal control in this area. <u>Update September 2023:</u> This audit has been moved from Q3 to Q4 as agreed with Management.
40	4	N/A	Culture	Marketing Strategy	Consultancy	Consultancy	Planned	Planned	Assess the governance arrangements and the progress towards delivering the Council's commitment in this area. Deferred at management request and the updated risk position. <u>Update September 2023:</u> This consultancy piece of work has been moved from Q1 to Q4 at Management's request.
41	4	N/A	Communities	Home Improvement Agency	Consultancy	Consultancy	Replaced by ICT audits	Planned	Consultancy on the option of the Council to establish a Home Improvement Agency for the delivery of Disabled Facilities Grants <u>Update September 2023:</u> The 12 days allocated to this consultancy piece of work will not be transferred to ICT assurance assignments.
<b>Work Planned for Throughout 2023-24</b>									

Ref	Plan Quarter	Actual Quarter	Dept.	Audit	Comment	Risk	Status Now	Status Last Quarter	Comments
42			Council Wide	ICT Audits	Assurance	High	Ongoing		To be completed across 2023-24. <u>Update September 2023:</u> 4 ICT audits will be delivered: - Patch management - Back-ups - Tiering of Administrator Accounts - Third Party hosting This will replace the change management and ICT Benefits realisation as agreed with management. These 4 ICT audits represent 32 days versus 20 days budgeted in 23/24 for ICT audits. It is agreed to deliver those 4 ICT assurance work and remove the 12 days for the consultancy piece of work on "Home improvement agency" initially planned.
43			Counter Fraud	Counter Fraud	Assurance	High	Ongoing		Counter Fraud activity progresses throughout the year and is reported at each Committee.
44	Page 52		Risk Management	Risk Management Support	Assurance		Ongoing		Advise on the improvements to risk management including but not limited to the Strategic Risk Register, Risk Management Strategy, Risk Appetite and assurance mapping to identify the key sources of assurance. <u>Update September 2023:</u> Assurance mapping is in reporting phase.
45	1	N/A	ICT	ICT Cyber Incident Support	Assurance	High	Ongoing		Support from ARA on this area is available and accessible. Area discussed at each ARA and Section 151 Officer monthly meeting. Draw down not required as at June 2023.

Key

	The audit has started or will start on time.
	The audit commencement has been or is likely to be delayed.
	The audit is not likely to be undertaken in this financial year.

TBC	To be confirmed.
N/A	Not applicable.



<b>Meeting:</b>	<b>Audit and Governance Committee</b>	<b>Date:</b>	<b>12 September 2023</b>
<b>Subject:</b>	<b>Report by the Local Government and Social Care Ombudsman into a complaint against Gloucester City Council Environmental Services and Public Protection and Regulation</b>		
<b>Report Of:</b>	<b>Monitoring Officer</b>		
<b>Wards Affected:</b>	<b>All Wards</b>		
<b>Key Decision:</b>	<b>No</b>	<b>Budget/Policy Framework:</b>	<b>No</b>
<b>Contact Officer:</b>	<b>Alice McAlpine, Monitoring Officer</b>		
	<b>Email: <a href="mailto:alice.mcalpine@gloucester.gov.uk">alice.mcalpine@gloucester.gov.uk</a></b>		
<b>Appendices:</b>	<b>1. Report by the Local Government and Social Care Ombudsman (reference number:22 012 725)</b>		

**FOR GENERAL RELEASE**

**1.0 Purpose of Report**

1.1 To consider the report of the Local Government and Social Care Ombudsman following a complaint made in relation to a failure to investigate an alleged noise nuisance at a business property.

**2.0 Recommendations**

- 2.1 Audit and Governance Committee is asked to:
- i. Note the requirement for the report to be considered by an appropriate committee of the Council in accordance with the Local Government Act 1974;
  - ii. Note the contents of this report and the Ombudsman’s report;
  - iii. Note the remedial recommendations made by the Ombudsman;
  - iv. Note the agreed remedial actions already taken by the Council in response to the Ombudsman’s recommendations; and
  - v. Note and approve the proposal to progress the completion of those agreed remedial actions which are yet to be undertaken

**3.0 Background and Key Issues**

3.1 In December 2022 a complaint was made to the Local Government and Social Care Ombudsman (LGSCO) that the Council had failed to properly investigate a complaint about alleged noise nuisance at a business property caused by a neighbouring business. As a result, the complainants stated that they had suffered frequent intrusive noise while they were at work causing them distress and, in some cases, to lose business.

3.2 The LGSCO investigates complaints about maladministration and service failure. Where the LGSCO determine that a fault has caused an injustice, they may suggest

a remedy. The LGSCO upheld the complaint outlined at 3.1 and found fault causing injustice.

3.3 The LGSCOs final report was published on 9 August 2023 and the Council was required by the LGSCO to publish a press notice and make copies of the report available on request. Notices were published in Gloucester Citizen and the Western Daily Press on [14th August 2023. In addition, the Council posted a notice at its Gateway Centre and on its website. Copies of the report were made available for inspection at Management Offices, Eastgate Shopping Centre for three weeks starting on 14th August 2023.

3.4 In their finding of fault on the behalf of the Council the LGSCO made four remedial recommendations which are listed below and the Council has agreed to take the actions detailed to remedy the injustice determined by the LGSCO:

3.4.1 Write a formal letter of apology to the complainants to acknowledge the frustration they have suffered, and the uncertainty caused by its poor handling of the investigation into their allegations of noise nuisance. A letter of apology was sent on 4 August 2023;

3.4.2 Offer to pay the two complainants £250 each, for the same reason. Compensation was paid on 26 July 2023;

3.4.3 Agree that if the Council receives any new complaints of nuisance about the business in question, it should start a fresh investigation, approaching it as it would an investigation using the correct procedures and standard of proof. No further complaints have been received to date.

3.4.4 Circulate guidance to all relevant staff highlighting and correcting the factual errors the LGSCO identified in this case, which include that:

- a statutory nuisance can be suffered in a non-residential property, and the law does not limit this solely to residential properties. Therefore, when someone alleges, they are suffering a statutory nuisance in a non-residential property, officers should approach it in the same way as a complaint about a residential property;
- creating a statutory nuisance, in isolation, is not a criminal offence, and so it need only be proved to the civil standard to warrant serving an abatement notice. It is the breach of an abatement notice which constitutes a criminal offence; and
- section 82 of the Environmental Protection Act concerns statutory nuisance, not common law nuisance.

A review of the guidance was initiated on the 31 July 2023 and is being undertaken by an external Environmental Protection Consultant Lead Officer.

#### **4.0 Social Value Considerations**

4.1 There are no Social Value implications as a result of the recommendations made in this report.

#### **5.0 Environmental Implications**

5.1 There are no Environmental implications arising from the recommendation made in this report.

#### **6.0 Alternative Options Considered**

- 6.1 There are no alternatives as the LGSCO requires that their report is considered by an appropriate committee of the Council in accordance with s31 of the Local Government Act 1974.

## **7.0 Reasons for Recommendations**

- 7.1 The Council has agreed to take the remedial actions required by the LGSCO and also agreed to bring a report to an appropriate committee of the Council to note and endorse the actions taken and to be taken in response to the report and its findings.

## **8.0 Future Work and Conclusions**

- 8.1 The review of guidance issued to officers investigating noise nuisance is to be completed. Once completed the guidance will be circulated to appropriate officers.

## **9.0 Financial Implications**

- 9.1 There are no further financial implications arising from this report over and above the compensation payments already made.

(Financial Services have been consulted in the preparation this report.)

## **10.0 Legal Implications**

- 10.1 The LGSCO investigates complaints about maladministration and service failure. In accordance with the Local Government Act 1974, there is a requirement for the report to be considered in full by an appropriate committee of the Council. As the LGSCO has determined that a fault has caused an injustice the LGSCO has suggested a remedy and made a number of recommendations. The committee is required to consider the report and note the action that have been taken in response to the report and the further actions proposed. As the Council has agreed to take the recommended remedial action there are no further legal implications arising from this report.

(The Monitoring Officer has been consulted in the preparation this report.)

## **11.0 Risk & Opportunity Management Implications**

- 11.1 Failure to take the required remedial actions could have resulted in further action being taken by the LGSCO but this has been fully mitigated. Officers are reviewing guidance which will ensure that all future investigations will be carried out in accordance with legislation and best practice.

## **12.0 People Impact Assessment (PIA) and Safeguarding:**

- 12.1 The PIA Screening Stage was completed and did not identify any potential or actual negative impact; therefore a full PIA was not required.

## **13.0 Community Safety Implications**

13.1 There are no Community Safety implication as a result of recommendations made in this report.

#### **14.0 Staffing & Trade Union Implications**

14.1 There are no Staffing and Trade Union implications as a result of recommendations made in this report.

#### **Background Documents:**



**Report by the Local Government and Social Care  
Ombudsman**

**Investigation into a complaint about  
Gloucester City Council  
(reference number: 22 012 725)**

**17 July 2023**

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## The Ombudsman's role

For almost 50 years we have independently and impartially investigated complaints about councils and other organisations in our jurisdiction. If we decide to investigate, we look at whether organisations have made decisions the right way. Where we find fault has caused injustice, we can recommend actions to put things right, which are proportionate, appropriate and reasonable based on all the facts of the complaint. We can also identify service improvements so similar problems don't happen again. Our service is free.

We cannot force organisations to follow our recommendations, but they almost always do. Some of the things we might ask an organisation to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

We publish public interest reports to raise awareness of significant issues, encourage scrutiny of local services and hold organisations to account.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr and Mrs W

The complainants

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## Report summary

### Environmental Services & Public Protection & Regulation

Mr and Mrs W complained the Council failed to properly investigate their complaint about an alleged noise nuisance in their business property, caused by a neighbouring business. As a result, they say they have suffered frequent intrusive noise while they are at work, causing them distress and, in some cases, to lose business.

### Finding

Fault found, causing injustice, and recommendations made.

### Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

To remedy the injustice identified in this report, we recommend the Council:

- write a formal letter of apology to Mr and Mrs W, acknowledging the frustration they have suffered, and the uncertainty caused by its poor handling of the investigation into their allegations of noise nuisance;
- offer to pay Mr and Mrs W £250 each, for the same reason;
- if it receives any new complaints of nuisance about the business in question, it should start a fresh investigation, approaching it as it would an investigation of nuisance affecting a residential property; and
- circulate guidance to all relevant staff highlighting and correcting the factual errors we have identified in this case, which include that:
  - a statutory nuisance can be suffered in a non-residential property, and the law does not limit this solely to residential properties. Therefore, when someone alleges they are suffering a statutory nuisance in a non-residential property, officers should approach it in the same way as a complaint about a residential property;
  - creating a statutory nuisance, in isolation, is not a criminal offence, and so it need only be proved to the civil standard to warrant serving an abatement notice. It is the breach of an abatement notice which constitutes a criminal offence; and
  - section 82 of the Environmental Protection Act concerns statutory nuisance, not common law nuisance.

The Council has accepted these recommendations.

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## The complaint

1. Mr and Mrs W complained the Council failed to properly investigate their complaint about an alleged noise nuisance in their business property, caused by a neighbouring business. As a result, they say they have suffered frequent intrusive noise while they are at work, causing distress and, in some cases, to lose business.

## Legal and administrative background

### The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision making, we cannot question the outcome. (*Local Government Act 1974, section 34(3), as amended*)

### Statutory nuisances

4. Under the Environmental Protection Act 1990 (EPA), councils have a duty to take reasonable steps to investigate potential 'statutory nuisances'.
5. Typical things which may be a statutory nuisance include:
  - noise from premises or vehicles, equipment or machinery in the street
  - smoke from premises
  - smells from industry, trade or business premises
  - artificial light from premises
  - insect infestations from industrial, trade or business premises
  - accumulation of deposits on premises.
6. For the issue to count as a statutory nuisance, it must:
  - unreasonably and substantially interfere with the use or enjoyment of a home or other premises; and / or
  - injure health or be likely to injure health.
7. There is no fixed point at which something becomes a statutory nuisance. Councils will rely on suitably qualified officers (generally an environmental health officer, or EHO) to gather evidence. They may, for example, ask the complainant to complete diary sheets, fit noise-monitoring equipment, or undertake site visits. Councils will sometimes offer an 'out-of-hours' service for people to contact, if a nuisance occurs outside normal working time.
8. Once the evidence-gathering process is complete, the environmental health officer(s) will assess the evidence. They will consider factors such as the timing, duration, and intensity of the alleged nuisance. The officer(s) will use their professional judgement to decide whether a statutory nuisance exists.

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9. Councils can also decide to take informal action if the issue complained about is causing a nuisance, but is not a statutory nuisance. They may write to the person causing the nuisance or suggest mediation.

### **Abatement notices**

10. If the council is satisfied a statutory nuisance is happening, has happened or will happen in the future, it must serve an abatement notice. If the nuisance is noise from premises, the council may delay service of an abatement notice for a maximum of seven days, to attempt to address the problem informally.
11. An abatement notice requires the person or people responsible to stop or limit the activity causing the nuisance. Failure to comply with an abatement notice is an offence, which can lead to prosecution and a fine.
12. A person who receives an abatement notice has a right to appeal it in the Magistrates' Court. It may be a defence against a notice to show they have taken reasonable steps to prevent or minimise a nuisance.

### **Section 82 of the Environmental Protection Act 1990**

13. A member of the public can also take private action against an alleged nuisance in the Magistrates' Court. If the court is persuaded they are suffering a statutory nuisance, it can order the person or people responsible to take action to stop or limit it.
14. This process does not involve the council, but it is good practice for councils to draw a complainant's attention to their right to private action under section 82.

### **How we considered this complaint**

15. We produced this report after examining relevant documents, including Mr and Mrs W's correspondence with the Council, the Council's notes of its investigation and contact with the other party, the law and Government guidance on statutory nuisance, and comments the Council provided in response to enquiries we made.
16. We also shared a draft copy of this report with each party for their comments, and considered these before issuing the final report.

### **What we found**

17. The following chronology provides a summary of the key events relevant to this complaint. It does not include every detail of what happened.
18. Mr and Mrs W own and run a business on the ground floor of a building. On the first floor of the building there is another business. We will refer to these as Businesses A and B respectively.
19. In 2022 Mr and Mrs W reported to the Council they were suffering a noise nuisance, caused by activities in Business B. Between August and October they completed a noise diary, which reported frequent instances of loud "banging" from Business B on most days. They said the noise and vibration was powerful enough to shake walls and light fittings in Business A, that it caused them to have headaches, and that on several occasions it had driven customers away.
20. Mr and Mrs W submitted the noise diary to the Council on 5 October. They say they called the Council the following day, but were told it could only deal with "amplified music" as a potential source of noise nuisance.

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21. The Council's notes say an officer visited Business A on 17 October, at which time Business B was closed and so there was no noise. After discussing the problem with Mr and Mrs W, the officer said they "made it clear that the banging noise doesn't meet the threshold for Statutory Nuisance".
  22. The officer spoke to the owner of Business B on the phone the following day. The owner told the officer Business B was open from "Monday to Sunday between 0800hrs to 2300hrs". The officer suggested the owner add an extra layer of noise insulation, but noted the owner said he could not afford to do this. The owner also said his relationship with Mr and Mrs W had broken down.
  23. The Council's notes then say an officer visited again on 7 November. On this occasion Business B was open, and the officer noted they had witnessed the banging noise in "the far corner of [Business A]". The officer went upstairs to Business B and spoke to the owner, who said he would be happy to have a 'restorative justice' meeting with Mr and Mrs W; however, Mr and Mrs W then rejected this suggestion.
  24. Following this visit, Mr and Mrs W had some further email communication with the Council, which culminated in them making a formal complaint.
  25. The Council responded on 24 November. It explained councils rely on section 79 of the Environmental Protection Act 1990 to investigate noise complaints, which "places a duty on local authorities to investigate noise affecting residents in their place of residence". It pointed out Mr and Mrs W's business was not a residential property, but despite this it had decided to investigate their complaint "informally".
  26. However, the Council explained that commercial premises, accused of creating noise nuisance, can rely on a legal defence of 'best practicable means' (which means they have taken all reasonable steps to control the noise). In this case, it considered the owner of Business B had achieved this by his use of noise insulation, and because he was seeking "additional [insulation] solutions". The Council said it had also considered whether it could take action under the planning or health and safety at work rules, but decided these did not apply.
  27. The Council advised Mr and Mrs W they had a right to take their own action under section 82 of the Environmental Protection Act. It said this covered "Common Law nuisance" and that this had a lower threshold than statutory nuisance.
  28. The Council encouraged Mr and Mrs W to engage in mediation with the owner of Business B, and also suggested they may wish to take the matter up with their landlord if they felt they had been misled in agreeing to their lease.
  29. Mr and Mrs W submitted a stage 2 complaint on the same day. They said the legal definition of a statutory nuisance referred to nuisances which affect the "use or enjoyment of a home or other premises", and was not, therefore, restricted to residential properties as the Council had said.
  30. Mr and Mrs W said they could not afford to take private action against Business B. They also explained they were not prepared to engage in mediation, because they felt they should suffer "zero disturbance" in the same way they did not cause disturbance to Business B.
  31. Mr and Mrs W also questioned the fact the Council had originally told them it could only take action against nuisance caused by amplified music, but now said it was because their property was non-residential. They said neither of these was a valid reason for the Council not to act.

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32. The Council replied on 9 December, and said Business B's "operational times" were "Monday and Wednesday 16:30 to 17:30 then 18:00 to 19:00", and "Friday after 19:00". It said officers were satisfied the owner had taken reasonable steps to install noise mitigation and minimise impact, and that Business B had been operating to these hours "well in advance" of Mr and Mrs W's occupation of their property.
  33. The Council said that, when dealing with complaints about noise nuisance, it could approach the problem as either a potential statutory nuisance, or as anti-social behaviour. It explained the criteria for statutory nuisance and said it did not consider this "the appropriate remedy [because] it is not consistent with a criminal offence". The Council also said it did not consider the owner's behaviour to amount to anti-social behaviour.
  34. The Council reiterated the owner was willing to resolve the problem amicably, as they were "currently engaged with [another local authority] in delivering activities ... beyond their normally scheduled operating times". It encouraged Mr and Mrs W to reconsider mediation, and advised them again of their rights under s82 of the Environmental Protection Act.
  35. Mr and Mrs W complained to us on 14 December.

## **Analysis**

36. Our role is to review how councils have made their decisions. We may criticise a council if (for example) it has not followed an appropriate procedure, not considered relevant information, or failed to properly explain a decision it has made. We call this 'fault', and where we find it, we can consider the consequences of the fault and ask the council to address these.
37. But we do not make decisions on councils' behalf, and we do not provide a right of appeal against contested decisions. If we find a decision has been made without fault, we cannot criticise it, no matter how strongly a complainant may feel it is wrong. We do not uphold complaints simply because someone believes a council should have made a different decision.
38. What this means is, in a complaint about noise nuisance such as this one, it is never for us to come to our own view the noise amounts to a statutory nuisance, and that the council should therefore take action to enforce against it. This remains a matter of professional judgement for the council alone to make.
39. We should also note that, while it is for councils to determine whether a noise meets the threshold of a statutory nuisance, we consider it unlikely any council would require 'zero disturbance' on the perpetrator's part, as Mr and Mrs W have requested. Rather, a council would generally expect the perpetrator of a nuisance to take steps to mitigate it, to the point where it no longer met the statutory nuisance threshold.
40. The law does not define a specific procedure for councils to investigate alleged statutory nuisances, but it does require them to undertake 'reasonably practicable' steps to investigate when a person complains about a potential nuisance. Based on standards of good administrative practice, this means that councils should act without undue delay, do everything they reasonably can to obtain reliable objective evidence about the nuisance, make a thorough assessment of the evidence, and then make a clear decision whether it amounts to a statutory nuisance. And, if so, they should then take prompt enforcement action.

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41. Mr and Mrs W say the Council originally told them it could only deal with amplified music as a possible noise nuisance. We have not seen an objective record of this comment and so we cannot make a finding about it, although it is certainly not the case that councils can only enforce against nuisance caused by amplified music.
42. But what is objectively clear is that the Council considered that, as Mr and Mrs W's property was non-residential, the statutory nuisance regime did not apply here. This is stated explicitly in the Council's stage 1 complaint response.
43. A statutory nuisance is defined, in guidance published by the Department for Environment, Food & Rural Affairs (Defra), as something which affects a "home or other premises". This clearly implies both residential and non-residential properties. There is nothing in the guidance, nor the Environmental Protection Act itself, which says a non-residential property cannot suffer a statutory nuisance. We do not consider there is any evidence to support the Council's interpretation of the law.
44. We are conscious the Council decided to investigate anyway. However, it says it decided to do this "informally". The Council expanded on this point in its response to our enquiries in this case, where it said:
- "The city council in our investigations aim to be impartial in their assessments as such do not believe there is an injustice to either party, our aim is to ensure an amicable solution that allows for harmonious operation of both businesses. As our investigations have indicated no statutory nuisance has been identified to date and although it does not fit into the remit of our typical Statutory Noise Nuisance investigations, The City Council has continued to ask both parties to work together in finding a solution. [Business B] has agreed and is continuing to seek further mitigation where possible and avoids the opening times of [Business A].*
- "It is often the case in the experience of investigating officers, without co-operation and collaboration it is difficult to find amicable solutions, (and limitations due to limited funding available to small businesses/charities) our aims are to continue to work with the [Business B] and [Mr and Mrs W] to ensure that they both can operate without significant disturbance."*
45. We consider this to be fundamentally incorrect. This is not to say councils cannot take an informal, conciliatory approach to resolving disputes of this nature, but they may only do so after deciding there is not a statutory nuisance. If there is a statutory nuisance, then the law says councils must take enforcement action (albeit with a possible seven-day delay in some cases). It follows, therefore, that the first step for councils in such cases is to carry out a proper investigation, and gather enough reliable evidence to make this critical decision.
46. We do not consider the Council has done so here. Its investigation consisted of two visits to Mr and Mrs W's premises. During the first, there was no noise to be heard because Business B was closed. Despite this, the officer told Mr and Mrs W it was not a statutory nuisance. The officer's note does not provide any justification for this statement, although we infer it may be because of the Council's faulty interpretation of the law.
47. During the second visit, the officer did hear the noise. Given this prompted them to visit Business B and speak to the owner, it is likely – on balance – they considered the noise worthy of further investigation. However, they did not make a decision, at that point or later, whether it reached the threshold of a statutory nuisance. Instead, the Council took the decision that, because the owner had installed some sound insulation, there was nothing further for it to do.



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48. In fact, throughout this complaint and our enquiries, the Council has made a great deal of the fact the owner of Business B has been co-operative. In isolation this is, of course, positive; but this does not mean Business B is not causing a statutory nuisance, and if it is, the law says the Council must act formally. It is not enough for the Council simply to point to some mitigation the owner has installed and then take no further action, especially when it is yet to decide whether there is a statutory nuisance.
49. We note the Council has referred to the fact the owner could possibly rely on a 'best practicable means' defence, if he were to appeal an abatement notice. This is true, and it can be an important consideration for councils when dealing with statutory nuisances. However, for this to become relevant, the Council would first need to decide whether the noise Business B is creating is a statutory nuisance, which it has not done.
50. Similarly, the Council said the owner of Business B had been operating to "the existing schedule" long before Mr and Mrs W occupied their property. We infer the Council is referring here to another potential defence against an abatement notice, which is called 'coming to the nuisance' – in other words, that the perpetrator had already been creating the noise, or other nuisance, before the complainant(s) occupied their property, and so it is the complainant's actions, and not the perpetrator's, which are responsible for the problem.
51. However, there is caselaw on this principle (*Coventry and others v Lawrence and others [2014] UKSC 13*), and it is not a simple question of 'who was there first?', as the Council has made it out to be here. And, again, for this to be relevant, the Council would first need to decide the noise was a statutory nuisance.
52. All this leads us to be concerned that the Council decided right at the beginning it would not find a statutory nuisance in this case. Everything it did then appears to have been an attempt to retrospectively justify this decision, rather than an open-minded and balanced enquiry to decide whether Mr and Mrs W were suffering a statutory nuisance. This is fault.
53. And there are also various other points of fault in this case.
54. First, in its stage 2 response, the Council said the owner's actions were not "consistent with a criminal offence" for the purposes of section 79 of the Environmental Protection Act. This implies the Council believed it needed to prove to the criminal standard of proof ('beyond a reasonable doubt') that a statutory nuisance existed, to serve an abatement notice.
55. This is not correct. To serve an abatement notice, a statutory nuisance need only be proved to the civil standard of proof ('the balance of probabilities'), which is a much lower threshold. It is only once an abatement notice has been served, and breached, that the matter becomes a criminal offence.
56. Second, again in the stage 2 response, the Council said Business B was operating only for two (separate) hours each day on Mondays and Wednesdays, and "from 1900hrs" on Friday. This appears to relate to the point the Council made in its response to our enquiries, that the owner was attempting to avoid opening at the same time as Mr and Mrs W's business.
57. But, again, it is clear this is incorrect. In fact the Council noted itself, during its phone call with the owner after the first visit, that Business B was open for much longer hours than this, and on every day of the week. Business B also advertises itself as being open at similar times on two internet sites. And a further website also shows Business B's opening hours coincide daily with those of Business A.

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58. Given our concern the Council prejudged its decision here, it does not appear the opening hours point has made any substantive difference to the outcome. But it reinforces the fact the Council has not carried out a robust investigation.
59. As we have explained, it is not for us to decide whether Mr and Mrs W are suffering a statutory nuisance, and so none of our criticisms should be read to mean they are.
60. But the law requires the Council to carry out a proper investigation of their complaint of noise nuisance, and we are not persuaded it has discharged that duty here. Most critically, it has relied on a faulty interpretation of the law; and this has tainted its entire consideration of the matter, and led it to dismiss the possibility there was a statutory nuisance right at the beginning.
61. It remains possible the Council would have decided there was no statutory nuisance, even if it had investigated properly. We cannot say, therefore, the injustice to Mr and Mrs W is that the Council should have served an abatement notice on the owner.
62. And, even if it had, this does not mean the noise would necessarily then have been abated. The owner would have had the right to appeal any notice, and so we must entertain the possibility the court would have upheld an appeal. Or, the owner may simply have chosen to breach the notice, leaving the Council with the decision whether to prosecute him for this.
63. So we cannot speculate what would have happened, had there been no fault here. But the uncertainty caused by the Council's fault represents its own injustice to Mr and Mrs W. We are also satisfied they have suffered frustration and distress because of the Council's failure to properly investigate. We will consider what the Council should do to remedy this in the next section.
64. But before that, there is another, separate point of fault we will discuss.
65. In its stage 1 response, the Council said:
- "You may wish to take a private case (known as a Common Law nuisance or a section 82), you have indicated this is being considered by yourselves. The advantages to you taking such a case is that it is not restricted to particular types of nuisances/categories and the legal threshold is lower for a common law nuisance compared to that of a statutory nuisance..."*
66. Section 82 of the Environmental Protection Act allows members of the public "aggrieved of a statutory nuisance" to apply direct to the Magistrates' Court, instead of asking their local authority to investigate. The court will then make its own decision whether there is a statutory nuisance, and order its abatement if so.
67. Common law nuisance, on the other hand, is a different part of civil law. It is not what the court considers when hearing a section 82 application. The Council has conflated these two procedures.
68. Mr W has already told us they do not intend to pursue a section 82 application anyway, and so we do not consider this fault represents an injustice to Mr and Mrs W. However, we consider the Council should take steps to ensure relevant staff have an accurate understanding of complainants' rights under section 82.

## Conclusions

69. The Council's duty in this case was essentially a straightforward one – take what steps it reasonably could to gather objective evidence about the noise, and

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decide whether it amounted to a statutory nuisance. But the Council has not discharged this duty.

70. It appears the Council dismissed the possibility this could be a statutory nuisance at the beginning of the process, all because of a faulty interpretation of the law. Although it then investigated anyway, its investigation was brief, and it relied on weak justification not to take it further. It also made a series of factual errors.
71. To put right the injustice this has caused, we consider the Council should do two things.
72. First, if the Council receives any further complaints about alleged noise nuisance from Business B, it should begin its investigation of the alleged noise nuisance again. It is for the Council to decide how to conduct the investigation, but it should ensure it takes all reasonable steps to gather objective evidence about the noise, and then make an open-minded decision whether it amounts to a statutory nuisance.
73. And, for reasons of fairness and objectivity, we consider this investigation should, if possible, be undertaken by an officer or officers not previously involved in the case.
74. Second, the Council should offer Mr and Mrs W a financial remedy for the frustration they have suffered because of its poor investigation, and the uncertainty it has caused. We consider £250 each is an appropriate offer, based on our *Guidance on remedies*.

## **Recommendations**

75. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
76. Within one month of the date of this report, the Council should:
  - write a formal letter of apology to Mr and Mrs W, acknowledging the frustration they have suffered, and the uncertainty caused by its poor handling of the investigation into their allegations of noise nuisance;
  - offer to pay Mr and Mrs W £250 each, to reflect the frustration they have suffered, and the uncertainty caused by its poor handling of the investigation into their allegations of noise nuisance;
  - if it receives any further complaints about alleged noise nuisance from Business B, it should start a fresh investigation, approaching it as it would an investigation of nuisance affecting a residential property; and
  - circulate guidance to all relevant staff highlighting and correcting the factual errors we have identified in this case, which include that:
    - a statutory nuisance can be suffered in a non-residential property, and the law does not limit this solely to residential properties. Therefore, when someone alleges they are suffering a statutory nuisance in a non-residential property, officers should approach it in the same way as a complaint about a residential property;
    - creating a statutory nuisance, in isolation, is not a criminal offence, and so it need only be proved to the civil standard to warrant serving an abatement

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notice. It is the breach of an abatement notice which constitutes a criminal offence;

- section 82 of the Environmental Protection Act concerns statutory nuisance, not common law nuisance.

77. The Council has accepted these recommendations.

### **Final decision**

78. We propose to complete our investigation. There is evidence of fault by the Council which caused injustice to Mr and Mrs W. The Council should take the action identified in paragraphs 76 and 77 to remedy that injustice.

**Gloucester City Council**  
**Audit and Governance Committee Work Programme 2023-24**  
**Updated 1 September 2023**

<b>Item</b>	<b>Format</b>	<b>Committees</b>	<b>Lead Officer</b>	<b>Notes</b>
<b>13<sup>th</sup> November 2023</b>				
1. Internal Audit Activity Progress 2023/24	Written Report	Audit and Gov	Head of IA&RM Shared Service	Part of the Committee's annual programme of work
2. Treasury Management Performance 2023/24 Six Monthly Update	Written Report	Audit and Gov Cabinet	Head of Finance and Resources	Part of the Committee's annual programme of work
3. S 106 agreements – progress update	Update	Audit and Gov	Head of Place	Requested
4. Audit and Governance Committee Work Programme	Timetable	-----	-----	Standing Agenda Item
<b>15<sup>th</sup> January 2024</b>				
1. Internal Audit Plan 2023/24 – Monitoring Report	Written Report	Audit and Gov	Head of IA&RM Shared Service	Part of the Committee's annual programme of work
2. Treasury Management – Quarterly Update	Written Report	Audit and Gov Cabinet	Head of Finance and Resources	Part of the Committee's standing work programme
3. S 106 agreements – progress update	Update	Audit and Gov	Head of Place	Request

4. Audit and Governance Committee Work Programme	Timetable	-----	-----	Standing Agenda Item
<b>4<sup>th</sup> March 2024</b>				
1. Internal Audit Activity 202324 – progress report.	Written Report	Audit and Gov	Head of IA&RM Shared Service	Part of the Committee's annual programme of work
2. Draft Internal Audit Plan 2024-25	Written Report	Audit and Gov	Head of IA&RM Shared Service	Part of the Committee's annual programme of work
3. S 106 agreements – progress update	Update	Audit and Gov	Head of Place	Requested
4. Strategic Risk Register	Written Report	Audit and Gov	Head of IA&RM Shared Service	Part of the Committee's annual programme of work
5. Audit and Governance Committee Work Programme	Timetable	-----	-----	Standing Agenda Item