

County Offices
Newland
Lincoln
LN1 1YL

26 February 2018

Executive

A meeting of the Executive will be held on **Tuesday, 6 March 2018** in **Committee Room One, County Offices, Newland, Lincoln LN1 1YL** at **10.30 am** for the transaction of business set out on the attached Agenda.

Yours sincerely



Tony McArdle
Chief Executive

Membership of the Executive
(8 Members of the Council)

Councillor M J Hill OBE, Executive Councillor for Resources and Communications (Leader of the Council)

Councillor Mrs P A Bradwell, Executive Councillor for Adult Care, Health and Children's Services (Deputy Leader)

Councillor C J Davie, Executive Councillor for Economy and Place

Councillor R G Davies, Executive Councillor for Highways, Transport and IT

Councillor E J Poll, Executive Councillor for Commercial and Environmental Management

Councillor Mrs S Woolley, Executive Councillor for NHS Liaison and Community Engagement

Councillor C N Worth, Executive Councillor for Culture and Emergency Services

Councillor B Young, Executive Councillor for Community Safety and People Management

**EXECUTIVE AGENDA
TUESDAY, 6 MARCH 2018**

Item	Title	Forward Plan Decision Reference	Pages
1	Apologies for Absence		
2	Declarations of Councillors' Interests		
3	Announcements by the Leader, Executive Councillors and Executive Directors		
3a	A Fair Deal for Lincolnshire <i>(To receive an update on the 'A Fair Deal for Lincolnshire' campaign)</i>	~	
4	Minutes of the Meeting of the Executive held on 6 February 2018		5 - 10

KEY DECISIONS - ITEMS TO BE RESOLVED BY THE EXECUTIVE

5	Establishment of a Holding Company <i>(To receive a report from the Executive Director of Finance and Public Protection, which seeks the Executive's approval for the establishment of a Holding Company limited by shares and 100% owned by the County Council)</i>	I014970	11 - 26
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NON KEY DECISIONS - ITEMS TO BE RESOLVED BY THE EXECUTIVE

6	Report by the Local Government and Social Care Ombudsman <i>(To receive a report from the Executive Director for Adult Care and Community Wellbeing and the Monitoring Officer, which invites the Executive to consider the Report and outcome of an investigation by the Local Government and Social Care Ombudsman into allegations of maladministration and for the Executive to receive the Ombudsman's Report on behalf of the Council and consider the recommendations of the Ombudsman and the actions taken and proposed to be taken by the Council under the Local Government Act 1974)</i>	I015221	27 - 60
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7 Council Business Plan 2017 - 2018 Performance Report, Quarter Three

I014184

61 - 70

(To receive a report from the Executive Director for Finance and Public Protection, which presents an overview of performance for Q3 against the Council Business Plan)

Democratic Services Officer Contact Details

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E Mail Address cheryl.hall@lincolnshire.gov.uk

Please Note: for more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting

- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details set out above.

All papers for council meetings are available on:
www.lincolnshire.gov.uk/committeerecords



**EXECUTIVE
6 FEBRUARY 2018**

PRESENT: COUNCILLOR M J HILL OBE (LEADER OF THE COUNCIL)

Councillors Mrs P A Bradwell (Executive Councillor for Adult Care, Health and Children's Services) (Deputy Leader), C J Davie (Executive Councillor for Economy and Place), R G Davies (Executive Councillor for Highways, Transport and IT), E J Poll (Executive Councillor for Commercial and Environmental Management), Mrs S Woolley (Executive Councillor for NHS Liaison and Community Engagement), C N Worth (Executive Councillor for Culture and Emergency Services) and B Young (Executive Councillor for Community Safety and People Management).

Councillor Clio Perraton-Williams (Executive Support Councillor for Highways, Transport and IT) was also in attendance.

Officers in attendance:-

Debbie Barnes (Executive Director, Children's Services), David Forbes (County Finance Officer), Glen Garrod (Executive Director of Adult Care and Community Wellbeing), Andy Gutherson (County Commissioner for Economy and Place), Cheryl Hall (Democratic Services Officer), Pete Moore (Executive Director, Finance and Public Protection), Jasmine Sodhi (Performance and Equalities Manager) and Nigel West (Head of Democratic Services).

50 APOLOGIES FOR ABSENCE

Apologies for absence were received from Tony McArdle (Chief Executive).

It was noted that Andy Gutherson (County Commissioner for Economy and Place) was attending the meeting on behalf of Richard Wills (Executive Director for Environment and Economy).

51 DECLARATIONS OF COUNCILLORS' INTERESTS

There were no declarations of interest at this point in the meeting.

52 ANNOUNCEMENTS BY THE LEADER, EXECUTIVE COUNCILLORS AND EXECUTIVE DIRECTORS

There were no announcements by the Leader, Executive Councillors or Executive Directors.

53 A FAIR DEAL FOR LINCOLNSHIRE

It was reported that the campaign was active and continued to gain support from various organisations, including parish councils.

The Fair Funding Review for Local Government consultation document had been launched on 21 December 2017, with the consultation running until 12 March 2018. It was reported that the Council would be responding before the deadline. There would be two further consultations issued by Government focusing on resources and transitional arrangements. It was anticipated that the implementation of any potential changes to the funding formula would be from April 2020.

It was noted that the Local Government Association (LGA) was due to consider the consultation document and would formulate its own response.

54 MINUTES OF THE MEETING OF THE EXECUTIVE HELD ON 3 JANUARY 2018

RESOLVED

That the minutes of the meeting of the Executive held on 3 January 2018 be signed by the Chairman as a correct record.

55 REVENUE AND CAPITAL BUDGET MONITORING REPORT 2017/18

Consideration was given to a report from the Executive Director of Finance and Public Protection, which provided an update on spending compared with budgets for the financial year, which started on 1 April 2017.

The County Finance Officer advised that the tables in the report had shown the actual income and expenditure for nine months of the financial year, along with the projections for spendings and a comparison of the projections against the approved budgets.

The report requested that the Executive recommend to the County Council on 23 February 2018 the approval of the transfer of £1.5m from Readiness for Schools (Children's Centres) to Readiness for Adult Life for supported accommodation for homeless young people. It was emphasised that spending on Children's Centres was not being reduced. It would be funded by using £1.5m from the Public Health grant reserve in 2017/18. The Executive supported the recommendation, as outlined above.

It was highlighted that *Other Budgets* was currently forecasting an £8.740m underspend. This was primarily due to national living wage growth in Adult Care being funded by the new Better Care Fund (BCF) monies in 2017/18. Beyond 2017/18, it was anticipated that national living wage costs in Adult Care would continue to be funded from BCF income.

The Chairman of the Overview and Scrutiny Management Board advised that the Board had considered an item on *Revenue and Capital Budget Monitoring Report 2017/18* at its meeting on 25 January 2018. The Board had supported the recommendation to transfer of £1.5m from Readiness for Schools (Children's Centres) to Readiness for Adult Life for supported accommodation for homeless young people. The Board also supported the carrying forward of an underspend, as it would place the County Council in a good position when setting future budgets.

In response to a question, it was advised that the County Council had ended its contract with Carillion, following the company's announcement that it had gone into liquidation. Officers had engaged with the Highways Alliance Framework to procure the remaining work on the Lincoln Eastern Bypass, which had now been packaged into smaller pieces of work.

RESOLVED

- (1) That the current position on the revenue and capital budgets be noted.
- (2) That the transfer of £1.500m from Readiness for Schools revenue budget to Readiness for Adult Life be recommended to the County Council.

56 COUNCIL BUDGET 2018/19

Consideration was given to a report from the Executive Director of Finance and Public Protection, which invited the Executive to consider its final proposals for the Council's budget and council tax in light of the provisional local government settlement and consultation comments on its initial proposals. The Executive was also asked to consider prudential targets in relation to capital financing and other treasury management matters and to recommend to full Council the Flexible Use of Capital Receipts Strategy for 2018/19.

The County Finance Officer introduced the report to the Executive and guided them through those updates to the Council Budget 2018/19, tabled at the meeting, which had taken place since the meeting on 19 December 2017. Some of the changes included the following: -

- The Government had confirmed that it would compensate local authorities in full for the continuation of the business rates cap, small business rate relief and rural rate relief would continue through a Section 31 grant, as in previous years. It was also advised that information on the Section 31 grant had not been received from all seven district councils. The grant for the County Council had been calculated to be £10.827m (£2.753m in 2017/18);
- The Council had been notified of two grants from government which had been incorporated into the Council's budget: Extended Rights to Free Travel (£0.639m), £0.007m, more than originally assumed; and Special Educational Needs and Disability (SEND) implementation grant for January 2018 to March 2019 (£0.323m), of which £0.259m had been budgeted for in 2018/19. It was noted that the SEND grant did not impact on the overall Council budget, as matching expenditure was created in Children's Services budgets;

- The current net increase in income from the changes to Business Rates income and grants, as detailed in the tabled updates, had increased the Council's income for 2018/19 by £21.487m (previously £13.023m);
- The government grant allocations assumed in the budget proposals were those announced in the Provisional Local Government Finance Settlement and therefore may be subject to change. The Final Settlement was expected during the afternoon of 6 February 2018;
- Consultation comments on the budget proposals and the ways in which they were reflected in the final proposals, were detailed at Appendix I to the report.

The Executive was asked to consider the potential use of the net additional income of £21.487m. The following three options were put to the Executive: -

- To reduce the amount of funding required from the Financial Volatility Reserve to set a balanced budget in 2018/19;
- To fund additional spending by the Council or reduce the savings required to be made; or
- To reduce the planned increase in Council Tax of 4.95%.

The Executive supported the recommendation that the net additional funding was used to reduce the contribution required from the Council's Financial Volatility Reserve to meet the 2018/19 budget shortfall.

The Chairman of the Overview and Scrutiny Management Board advised that comments from the overview and scrutiny committees and the Board on the *Council Budget 2018/19* were detailed at Appendix I. In response to a question, it was confirmed that the Overview and Scrutiny Management Board would receive a report on the proposal within the budget to invest £3m on Information Technology, as referred to in the Executive's report.

Members were provided with an opportunity to ask questions where the following points were noted: -

- Overall levels of funding to local government were reducing and would continue to reduce in future years. The use of any additional funding to smooth the effect of the budget reductions would allow the Council more time to develop robust new service models;
- It was confirmed that an item on the *Membership of the Local Government Association* would be considered by the Overview and Scrutiny Management Board at its meeting on 1 March 2018;
- It was also confirmed that funding for the Citizens Advice Bureaux had been re-added to the Council's base budget;
- It was suggested that delegated authority should be given to the Leader to review and amend the Executive's budget recommendations to the County Council, as appropriate, in light of the final Local Government Settlement once it had been received between the Executive meeting and the County Council on 23 February 2018;

- It was recognised that further difficult decisions would have to be made to balance the County Council's budget in future years. It was agreed that it was due to prudent accounting, including the management of reserves, that the County Council could balance its budget;
- The level of usable reserves would be significantly diminished by the end of the decade and the Council would face further challenges to set a balanced budget beyond this date, as there was significant uncertainty over levels of funding beyond the four-year deal. It therefore remained prudent to retain resources in the financial volatility reserve to deal with future financial uncertainties and challenges;
- It was reiterated that the Fair Funding Review for Local Government consultation document had been launched on 21 December 2017, with the consultation running until 12 March 2018. It was anticipated that the implementation of any potential changes to the funding formula would be from April 2020.

RESOLVED

- (1) That the effect of the updated funding available and revenue expenditure as noted in paragraphs 1.3 to 1.20, and as detailed at Appendices A and B to the report, be noted.
- (2) That the Equality Impact Analysis, as detailed at Appendix C to the report, and the consultation comments as shown in Appendix I to the report and presented at the meeting be noted.
- (3) That, subject to recommendation 4 below, the following be recommended to the County Council for approval:
 - (a) The revenue budget, as detailed at Appendix D to the report;
 - (b) The capital programme, as detailed at Table A and Appendix E to the report;
 - (c) The levels of council tax proposed in Table B of the report, including the increasing of council tax in 2018/19 by 4.95%;
 - (d) The prudential indicators, as detailed at Appendix G to the report;
 - (e) The flexible Use of Capital Receipts Strategy, as detailed at Appendix H to the report.
- (4) That the Leader of the Council be given delegated authority to review and amend the Executive's budget recommendations to the County Council, as appropriate, in light of the final Local Government Settlement, council tax and business rates information from the Lincolnshire District Councils if received between the Executive meeting and the County Council on 23 February 2018.

57 FINAL DRAFT COUNCIL BUSINESS PLAN 2018 - 2020

Consideration was given to a report from the Chief Executive, which presented the draft outcomes and measures generally as specified in Appendix A to the report, as the Council Business Plan for 2018-2020.

The Performance and Equalities Manager advised that the format and content of the Council Business Plan had remained largely unchanged from 2017/18 (with the exception of the inclusion of the 2018/19 and 2019/20 targets). The draft Council Business Plan was attached to the report at Appendix A and the changes to the content were detailed in Appendix B. The changes were also reflected in the equalities objectives, as detailed at Appendix C.

The Chairman of the Overview and Scrutiny Management Board advised that the Board had considered an item on *Final Draft Council Business Plan 2018 – 2020* at its meeting on 25 January 2018. The Board had supported the recommendations in the report. In response to a question, it was advised that the measure on *Youth Offending Victim Engagement* had been removed from the Council Business Plan as it was no longer a priority measure. It was noted that performance for this area would be measured through counting first time entrants and reoffending.

The Chairman of the Board emphasised the need for all County Councillors to be invited to undertake the annual Information Governance training, similar to the employees of the County Council. It was agreed that this would be taken forward by the Head of Democratic Services.

RESOLVED

- (1) That approval be given in principle to the recommendation of outcomes and measures, generally as specified in Appendix A to the report, as the Council Business Plan for 2018-2020.
- (2) That the Leader of the Council be given delegated authority to determine any changes to the said outcomes and measures to be finally recommended to the meeting of County Council on 23 February 2018, following discussion with Executive Councillors.

The meeting closed at 11.23 am.

**Open Report on behalf of Pete Moore,
Executive Director of Finance and Public Protection**

Report to:	Executive
Date:	06 March 2018
Subject:	Establishment of a Holding Company
Decision Reference:	I014970
Key decision?	Yes

Summary:

It is proposed that the County Council establish a Holding Company limited by shares, and 100% owned by the County Council. The Holding Company (HoldCo) will provide a mechanism and an overarching governance arrangement for the future establishment of further subsidiary Companies to be established for specific purposes e.g. property, investment, waste, commercial trading; joint ventures.

It is proposed that a business case is developed for the first subsidiary company to be established to deliver specialist housing for alleviating budgetary pressures in respect of the provision of adult care.

Recommendation(s):

That the Executive:

- 1) Approves the establishment of a Holding Company limited by shares and 100% owned by the County Council;
- 2) Approves the name of the company from the available names listed in the Report;
- 3) Delegates authority to the Executive Director for Finance & Public Protection in consultation with the Leader of the Council Executive Councillor for Resources and Communications to complete all legal matters to enable the company to be established including approval of the final form of all necessary legal documentation and the appointment of Directors and the Council's member representative;
- 4) Approves the development of a detailed business case to establish the first company beneath the Holding Company for the development of specialist housing in Lincolnshire to support adult care.

Alternatives Considered:	
1.	<p>Not to establish a Holding Company. Instead individual companies would be established for particular purposes as and when determined.</p> <p>This model would create various companies without any overarching governance arrangement. Each company would require its own direct governance arrangement with the Council leading to duplication and inefficiencies in operation. There may be a loss of tax efficiency.</p>

Reasons for Recommendation:	
<p>The establishment of a Holding Company by the Council will create a flexible framework for the establishment of subsidiary companies to enable the Council to create a set of different companies depending on the need and purpose which will support the Council in taking up opportunities to act more commercially.</p> <p>The benefit of this approach is that there will be a consistency in governance across all the companies which will be established through the adoption of the Holding Company's Articles of Association and a common Shareholder's Agreement in most instances although there may be some differences depending on the nature and purpose of the company. This will streamline the establishment of future companies.</p> <p>Future subsidiary companies to the Holding Company will be controlled by the Holding Company which will in turn be controlled by the Council. In this way the Council need only exercise its powers as a member in relation to the Holding Company thereby reducing the bureaucracy that would be involved in directly managing a number of separate companies.</p> <p>This approach will also enable the Council to derive benefits from group tax efficiencies.</p>	

1. Background

1.1 The Council's Corporate Property Service has identified a need to establish a corporate vehicle(s) to assist the Council to act flexibly and responsively to opportunities to act more commercially. The Council is by law required to utilise a corporate vehicle if it wishes to act for a commercial purpose. Activities currently being considered are property development, investment, waste, commercial trading and joint ventures with other local bodies or third sector partners. Some or all of these activities may require or benefit from being provided through a company.

2. Core Drivers

- 2.1 There is no commercial model in place to allow the Council to develop certain business areas, including property development, commercial and residential development, and establishing joint ventures with other bodies or third sector partners.

3. Options Analysis

- 3.1 The first main option open to the Council in establishing companies is to establish a Holding Company structure in advance of which future companies would be subsidiaries. In this way the Holding Company documents can form a suite of established governance documents (Articles of Association and Shareholder's Agreement) which can be maintained as consistent as possible across the company group subject only to changes necessary to reflect the nature and purpose of the subsidiary company. This prevents the need to develop fresh documentation each time a company is created.
- 3.2 The Council is also able to exercise its rights in respect of the subsidiary companies through the Holding Company rather than direct with each of the subsidiaries. This reduces duplication of member representatives.
- 3.3 Furthermore the Holding Company represents an efficient means for the Council to realise its returns from its commercially operated companies in the form of dividends on shares. These dividends can be routed through the Holding Company so the Council has only one relationship to manage in terms of the finances.
- 3.4 The alternative option is the creation of individual subsidiary companies without following a Holding Company approach. However, the creation of companies on an ad hoc basis leads to unnecessary duplication of effort and potential inconsistency in approach across the Council's companies. This was not considered to be an efficient approach and not an approach which would enable to Council to benefit from group tax efficiencies.

4. Company Formation

- 4.1 In consultation with specialist legal advisors (Bevan Brittan), the Council has established that the best model to adopt would be that of the formation of a Holding Company which sets the framework for the formation of any other companies the Council may wish to establish depending on the need and objectives to be achieved.
- 4.2 The Council will be the sole shareholder of the Holding Company. The company will have Articles of Association and the Council will control the operation of the Holding Company through a Shareholders' Agreement. The Shareholders' Agreement will contain a Schedule of Reserved Matters which are matters which cannot be decided by the board of directors but only by the Shareholders which means the Council.

- 4.3 One of the Reserved Matters listed in the Shareholders' Agreement will be the creation of any subsidiary companies. This means that the Council will always be in control of the creation of any new company. If a new company were considered necessary or desirable to achieve a certain objective, a full business case will have to be developed and submitted to the Executive for approval in accordance with the Council's constitution before any such new company could be established.
- 4.4 When a new company is created it will adopt the Articles of Association and Shareholder's Agreement of the Holding Company subject only to such amendments as are necessary to reflect the nature and purpose of the particular company. The Holding Company will be the owner of each subsidiary. However, each subsidiary company's Shareholder's Agreement will contain its own list of reserved matters that can only be decided by the Holding Company as the owner of the subsidiary. Each such reserved matter will itself be a reserved matter within the Council's Shareholder's Agreement with the Holding Company. By this means the Council is able to exert control over the subsidiary company through its control of the Holding Company.
- 4.5 Another reserved matter that the Council will control through the Holding Company is the declaration of dividends and therefore the distribution of profit back to the Council. The Holding Company will in essence be a conduit for the flow of the Council's returns in the form of dividends on shares through the structure of companies.
- 4.6 A "Heads of Terms" document has been prepared by Bevan Brittan in consultation with client officers and Legal Services Lincolnshire with regards the formation of the Holding Company and any subsidiaries and is appended at Appendix A to this report.
- 4.7 The Holding Company does not require any capital investment or revenue support. This means that there are no State Aid implications for the creation of the Holding Company. It is anticipated that any borrowing requirements of any subsidiary company will be identified in the detailed business case for each company. The State Aid implications of this will also be considered on a case by case basis.
- 4.8 Taxation will be looked at in each business case. This will allow proper consideration of individual areas to include capital allowances, stamp duty, corporation tax, options to elect to tax for VAT purposes and lease arrangements. In principle, however, the establishment of a Holding Company and subsidiary approach should enable the Council to take advantage of more tax efficient group company arrangements in appropriate circumstances.

- 4.9 It is anticipated that the Holding Company will influence its subsidiary companies in terms of overarching policies, Data Protection, Health and Safety and Insurance. Each entity will require a separate set of accounts, auditing and banking facilities coupled with governance requirements.
- 4.10 Initially at least one Director will need to be appointed to the holding company to enable registration.
- 4.11 There is a requirement to name the Holding Company and the following names are currently available at Companies House:
- (a) Lincolnshire Grow Limited,
 - (b) The New Lincolnshire Company Limited,
 - (c) Lincolnshire Future Limited; and
 - (d) Lincolnshire First Limited.
- 4.12 There are no immediate staffing requirements for the Holding Company and they will always be relatively minor compared with potential subsidiary companies. However, there will be a need for the Holding Company to administer its own internal administration and compliance with company requirements and in the longer term will need to administer the establishment and ongoing management of the subsidiary companies it creates. It is envisaged that this will be managed in the first instance at least through secondment or the provision of services by the Council to the Holding Company.
- 4.13 As the Holding Company would be 100% owned by the County Council it would be a local authority controlled company for the purposes of the Local Authority (Companies) Order 1995. This places a number of administrative obligations on companies that are controlled by a local authority including the obligation to make it known on the company's letter head that it is controlled by the County Council. These requirements will be met in establishing the Holding Company of approval is given to proceed.

5. Legal Issues:

5.1 Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in section 149 may involve treating some persons more favourably than others

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

There are not considered to be any equality impacts of the establishment of a holding company as an overarching governance structure for the creation of County Council companies. Impact Assessments will be completed alongside each business case for the formation of a subsidiary company by the Council.

5.2 Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

There are not considered to be any JSNA or JHWS impacts of the establishment of a holding company as an overarching governance structure for the creation of County Council companies. Further consideration will be given to these issues alongside each business case for the formation of a subsidiary company by the Council.

5.3 Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

There are no implications in relation to Crime and Disorder with regards the formation of a Holding Company by the Council.

6. Conclusion

The establishment of a Holding Company limited by shares and 100% owned by the County Council will create a vehicle to enable the County Council to establish subsidiary companies within an efficient governance structure to support the delivery of business needs identified by individual business cases and support the Council in taking up opportunities to act more commercially.

7. Legal Comments:

The Council has the power to form a Holding Company as proposed.

The legal implications and the other matters to which the Executive must have regard are dealt with in detail in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive.

8. Resource Comments:

There are no financial resources implications in the establishment of a County Council wholly owned company. Future subsidiary companies will developed with detailed business cases and these will identify financial resources implications and be reported to the Executive.

9. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The decision will be considered by the Overview and Scrutiny Management Board at its meeting on 1 March 2018 and the comments of the Committee will be reported to the Executive.

d) Have Risks and Impact Analysis been carried out

No

e) Risks and Impact Analysis

See the body of the Report

10. Appendices

These are listed below and attached at the back of the report	
Appendix A	DRAFT Schedule 1 - Proposed Corporate Structure (Bevan Brittan)

11. Background Papers

No Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of this Report.

This report was written by Kevin Kendall, who can be contacted on 01522 553726 or kevin.kendall@lincolnshire.gov.uk.

SCHEDULE 1 – PROPOSED CORPORATE STRUCTURE

ISSUE	COMMENT
SHAREHOLDERS' AGREEMENT AND ARTICLES OF ASSOCIATION	
Principal documents	<p>The Council and each Company will enter into the Shareholders' Agreement. New Companies created after the Agreement is initially executed will enter into the Shareholders' Agreement and be bound by its terms by executing a deed of adherence.</p> <p>Each Company will have Articles of Association. As far as possible these should be identical, although there may be some differences between (a) Teckal Cos and Trade Cos, or (b) Companies established for specific purposes which require slightly different governance provisions.</p>
Nature of Teckal Co business	<p>A given Teckal Co will provide:</p> <ol style="list-style-type: none"> a. services to the Council and other legal persons controlled by the Council (within the meaning of regulation 12 of the Public Contracts Regulations 2015) in accordance with any business plan then in force and on terms agreed between the Teckal Co and the Council b. services to any person not otherwise covered by (a) above in accordance with any business plan then in force and on terms agreed between the Teckal Co and that person c. such other services as the Council may from time to time determine and on terms agreed between the Teckal Co and the relevant counterparty/ies ¹
Nature of Trade Co business	<p>A given Trade Co will provide:</p> <ol style="list-style-type: none"> a. services to the Council in accordance with any business plan then in force and on terms agreed between the Trade Co and the Council b. services to any person not otherwise covered by (a) above in accordance with any business plan then in force and on terms agreed between the Trade Co and that person c. such other services as the Council may from time to time determine and on terms agreed between the Trade Co and the relevant counterparty/ies
Business plans and information flows	<p>Each Teckal Co and Trade Co will prepare a business plan for approval by the Council, to include:</p> <ul style="list-style-type: none"> • an annual operating revenue plan and capital expenditure requirements (including funding source) • a balance sheet forecast • a minimum [5] year term financial strategy plan to include (amongst other items) all proposed investments, borrowings and new business of the respective company and a list of key risks of the respective company's business • a plan for the use of any surpluses made in each Financial Year including the making of any distribution of profit subject to the provisions of Companies Act 2006 • an annual profit and loss account

¹ As part of the compliance requirements with the Teckal exemption, a Teckal Co will need to be governed and its business pursued in a manner which ensures that it (a) is and remains controlled (both by way of ultimate membership of the Teckal Co and decisive influence over both its strategic objectives and significant decisions) by the Council; (b) carries out the essential part of its activities for the Council and other legal persons controlled by the Council; (c) carries out those activities in furtherance of the Council's public service tasks; and (d) is not market orientated.

ISSUE	COMMENT
	<ul style="list-style-type: none"> any other content as requested in order to approve such business plan <p>We would recommend the business plan covers more than one financial year and is reviewed and updated at the start of each financial year.</p> <p>Each Company will deliver to the Council:</p> <ul style="list-style-type: none"> draft annual accounts in accordance with the timetable as agreed with the Council final audited annual accounts by 30 June in each financial year minutes of all Board meetings within 20 business days after the relevant Board meeting to which they relate all information required to be provided pursuant to other contractual commitments, within the timescales agreed any other information reasonably required by the Council from time to time <p>The Council (and its authorised representatives) will be able to request and inspect any documents or information during working hours on reasonable notice.</p>
Member/owner	<p>The Council will be the sole member of Hold Co and Hold Co will be the sole member of each of remaining Companies. This is subject to tax advice.</p> <p>The Council will exercise its rights (as ultimate owner or contract counterparty) through one or more authorised representatives. We would not recommend naming the representative in the Shareholders' Agreement, although the Council may wish for a role (or the person who would act as an authorised representative) to be specified.</p>
Board – size and composition	<p>Number and composition – to be discussed. Our preference would be for a number large enough to promote robust debate and small enough to be manageable (e.g. between 4 and 8).</p> <p>The Board could comprise executive directors, non-executive directors (Council nominees or externally sourced NEDs) and/or seconded directors (i.e. Council employees) in the following proportions:</p> <ul style="list-style-type: none"> a Board with NEDs only unbalanced Board with greater proportion of NEDs unbalanced Board with greater proportion of executive directors balanced Board with an equal split between executive and non-executive directors <p>What matters is ensuring that the size and composition of the Board promotes the type of business undertaken by the Company and that the persons appointed to the role of director understand the company's obligations. In addition, Teckal Cos must show that the Council exercises sufficient control over Board decision-making processes.</p> <p>Council appointment rights – the Council will have the right by notice in writing to appoint one or more directors to each Company Board and, depending on the composition, may appoint a majority of directors. Any director appointed by the Council may also be removed by the Council at any time. Company directors have a duty under the Companies Act 2006 to avoid situations where their interests do or may conflict with those of the company. Given the duties of elected members and Council officers in relation to conflicts of interests, careful thought is needed as to who should act as the Council's appointees on any given board. We would recommend in the first instance considering officers (rather than elected members) for directorships.</p> <p>Observers – senior Council officers (not themselves directors) would also have the right to receive notice of and attend any Company Board and act as observers.</p> <p>Company secretary – private companies are not required to appoint a company</p>

ISSUE	COMMENT
	secretary but may do so.
Board - decision-making	<p>The Shareholders' Agreement would contain a list of "reserved matters" requiring the prior consent of the Council. A proforma list of reserved matters is contained in this Schedule, for consideration by the Council. This will be one of the ways in which Council control over Teckal Cos will be evidenced for Teckal compliance purposes.</p> <p>Apart from the reserved matters, decisions which the Council (as member) is required to approve under the Companies Act 2006 and any matters which the Council directs a company's board to undertake (or not undertake), the day to day running of each Company will be left to the directors.</p> <p>The quorum at any Board meeting requires at least one non-executive director appointed by the Council to be present.</p> <p>Each director present and entitled to vote on a matter will have one vote. The chairman (who may be a fixed term or ad hoc appointment) will not have a casting vote.</p> <p>If there are more executive directors appointed than (Council-appointed) non-executive directors, then if those non-executive directors vote the same way, the matter becomes a reserved matter which can only proceed if the Council approves it.</p> <p>If the (Council-appointed) non-executive directors notify the Board that a particular matter (which is not otherwise a reserved matter) is sufficiently important to the Council, then the matter becomes a reserved matter which can only proceed if the Council approves it.</p>
Dispute resolution	Disputes would be dealt with by any means permitted by a particular agreement between a Company and the Council or, in the absence of a DRP within an agreement, by escalation to senior representatives and mediation.
Finance / profits	<p>Teckal Cos will be primarily funded through payments received from the Council for delivery of services. Trade Cos will be funded primarily through receipts from third party trading. Debt funding may only be procured with Council approval.</p> <p>Profits (to the extent distributable) will only be distributed in accordance with the business plan and Council approval.</p>
Issues of new shares / transfers of shares	<p>No issue or transfer of shares permitted without Council approval.</p> <p>Any new company will be required to adhere to the terms of the Shareholders' Agreement.</p>
RESOURCING AGREEMENT	
Resources to be supplied to the group companies	<p>The Council will need to consider the resource requirements for each Company which may include:</p> <ul style="list-style-type: none"> • support services • the use of premises – which would be licenced to each company for the duration of the Resourcing Agreement • equipment, materials and consumables – consumables would be sold to each company. Equipment would be licenced to each company for the duration of the Resourcing Agreement • staff – which could be seconded into a company from the Council • intellectual property – which would be licenced to each company by way of a revocable, non-exclusive, perpetual, royalty free licence for the duration of the Resourcing Agreement

ISSUE	COMMENT
	<ul style="list-style-type: none"> the benefit of goods and services provided to the Council by third party suppliers – for example hire purchase assets, which would be licenced to each company for the duration of the Resourcing Agreement information – which would be provided to each company subject to the company complying with laws relating to data protection and freedom of information <p>When services are required, a specification will need to be drawn up. The Resourcing Agreement would contain a proforma property licence, proforma secondment arrangements and resource request form. Subject to state aid compliance, the parties are free to agree other terms as required.</p> <p>The Council will need to consider whether resources will be supplied to a Trade Co on an exclusive basis or whether the Council wishes to give the Trade Co independence to obtain resources from a third party provider. The ability to call down resources should be subject to review after an initial period.</p> <p>The Council will have various obligations towards its Companies depending on the nature of the resources required (e.g. performance of services, good working order of assets).</p>
Payment of services	<p>Prices for individual services to be agreed and subject to state aid compliance. VAT, where applicable, will also be charged.</p> <p>Method of payment (e.g. monthly, annually, quarterly) to be agreed as well as the ability to set-off amounts due from Council to company.</p>
Contract managers	<p>Each company and the Council should appoint a contract manager to receive and send formal notices and communications. On the Council's side, this may (but does not need to be) the same person as the authorised representative under the Shareholders' Agreement. In particular the contract managers will be responsible for negotiating the provision of further services from the Council to each company and reviewing the standard of services provided.</p> <p>The contract managers will meet on a regular basis to monitor the performance of the Resourcing Agreement.</p>
Subcontracting	<p>The Council may subcontract the supply of any services/ assets without prior written consent of the relevant Company but it shall give the Company notice of that subcontracting.</p>
Dispute resolution	<p>The contract managers are initially responsible for resolving a dispute. If they are unable to resolve that dispute, it will then be passed to a senior member of each party, failing which the parties should follow a process of mediation to resolve any continuing issues. If mediation is not successful, the parties would then be entitled to arbitrate or litigate their dispute.</p>
New companies	<p>Any new group company will need to adhere to the terms of the Resourcing Agreement.</p>
Limitation on Council's liability	<p>There is no limit in relation to liability arising out of any loss or damage which the Council cannot by law exclude or limit. In all other circumstances, the Council's liability is limited to the value of the charges in any given financial year.</p>
Termination	<p>The Council may voluntarily terminate the Agreement at any time on no less than [x] months' notice. The Company may terminate services on [x] months' notice but the underlying Agreement remains in place.</p> <p>Either party may terminate for material breach.</p>
Boilerplate	<p>The Resourcing Agreement will contain "boilerplate" provisions relating to confidentiality, FOI, data protection, bribery and corruption, force majeure and</p>

ISSUE	COMMENT
provisions	insurance).
FUNDING AGREEMENT (DEBT)²	
Type of facility	<p>Revolving loan facility. The borrowing company will be able to re-borrow any amount repaid or prepaid, to the extent not previously cancelled by it (i.e. the borrowing company has not confirmed that it no longer needs the full extent of the facility).</p> <p>Drawdown will be subject to a number of conditions precedent</p>
Interest rate and security	<p>Dependant on the nature of the business and strength of the borrower. For state aid purposes, the interest rate needs to take into account the UK reference rate as well as the loan margin which reflects the level of collateralisation (security) and the strength of covenant of the relevant company in terms of its rating category (e.g. strong, good, satisfactory, weak or bad/financial difficulties).</p> <p>Default interest rate will apply if an event of default occurs. (e.g. non-payment).</p>
Repayment, cancellation of facilities and prepayment	All possible, subject to notice and minimum amounts.
Continuing obligations	<p>Each borrowing company will give a number of:</p> <ul style="list-style-type: none"> • representations • undertakings in relation to financial information, to be provided throughout the life of the loans • financial covenants
Events of default	<p>Usual loan agreement events of default (e.g. non-payment, cross-default, financial difficulties). Remedies available would be:</p> <ul style="list-style-type: none"> • cancellation of commitments to provide loan funding • all existing loans becoming due and payable • enforcement of security
New companies	Each new company in the group would enter into a separate loan agreement with the Council

² We need to discuss with you the means by which you would fund any given Company, with the principal methods being debt or equity, or a combination of the two. For present purposes, we have assumed that debt will be the means of funding. State aid issues will need to be considered in each case, although there may be relevant exemptions depending on the nature of the aid and the business (for example, De Minimis Regulations, General Block Exemption Regulations, Services of General Economic Importance (SGEI) and/or the market economy investor principle) – see **Error! Reference source not found.** for further consideration of state aid issues.

PROFORMA LIST OF RESERVED MATTERS (TO BE WORKED THROUGH)

Number	Reserved Matter
	Constitution of the Company
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the Company.
	Officers and shareholders of the Company
2	The appointment and the appointment terms (including any remuneration terms) of any directors other than Council appointed directors.
3	The removal of any directors (including any terms on which such directors are removed from their office as directors) other than Council appointed directors.
4	The admission of further shareholders or members to the Company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable).
5	The appointment or removal of the chair of the board (except where the chair is absent in which case the board will appoint an alternate chair).
	Future direction and development of the Company
6	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle
7	Amalgamating or merging with any other company or business undertaking.
8	Selling or disposing of a material part of the business of the Company.
9	Adopting or amending the business plan of each respective company and any in-year changes (where applicable).
10	Undertaking any business or action which is inconsistent with the business plan then in force or omitting to undertake any action which is required by that business plan except with the prior written consent of the Council
11	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
12	Agreeing or approving any other material services the total value of which exceeds £● per annum to be provided by the Company to a third party not approved under the business plan.
13	Appoint any agent (not being a subcontractor) to conduct the whole or any part of the business of the Company, other than the appointment of an agent to conduct an area of the business of a company
14	Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).
	Management of the business of the Company
15	Changing the Company's registered office.
16	Changing the Company's name.

17	Creating or agreeing to create a charge, security or encumbrance over the Company's assets, shares or income
18	Approving any matter that is reasonably likely to have an adverse effect on the reputation of the Council.
19	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the Company.
20	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company the total value of which exceeds £● per annum
21	Giving notice of termination of any arrangements, contracts or transactions the total value of which exceeds £● per annum or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a company.
22	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the Company.
23	Changing the Company's auditors.
24	Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a Teckal Co or Trade Co which has been approved under the business plan) or giving any guarantee or indemnity (other than in the normal course of trading).
25	Changing the financial year of the Company.
26	Increase or reduce the amount of its issued share capital, grant any option over or in its share capital, redeem or purchase any of its own shares or otherwise alter, or effect any reorganisation of, its share capital (where applicable).
27	Declare or pay any dividend of the Company (where applicable).

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Open Report on behalf of Glen Garrod, Executive Director for Adult Care and Community Wellbeing and Richard Wills, Monitoring Officer

Report to:	Executive
Date:	06 March 2018
Subject:	Report by the Local Government and Social Care Ombudsman
Decision Reference:	I015221
Key decision?	No

Summary:

To report to the Executive the Report and outcome of an investigation by the Local Government and Social Care Ombudsman ("the Ombudsman") into allegations of maladministration and for the Executive to receive the Ombudsman's Report on behalf of the Council and consider the recommendations of the Ombudsman and the actions taken and proposed to be taken by the Council under the Local Government Act 1974.

In addition this Report fulfils the Monitoring Officer's statutory responsibility under section 5A of the Local Government and Housing Act 1989 to report to the full Executive instances of maladministration in the exercise of executive functions identified as a result of an Ombudsman's investigation. On receipt of the Monitoring Officer's Report the Executive must consider the Report and determine (a) what action (if any) the executive has taken or proposes to take in response to the report, (b) when it will take any proposed action and (c) the reasons for taking the action or, as the case may be, for taking no action.

Recommendation(s):

That the Executive:-

1 Receives and considers this Report and the Report of the Ombudsman attached at Appendix A

2 Notes and affirms the actions already taken to address the concerns set out in the Ombudsman's Report as set out in this Report

3 Accepts the recommendations of the Ombudsman at paragraph 59 of the Ombudsman's Report as set out in paragraph 1.38 of this Report

4 Approves the carrying out of a full review of the legal, financial and operational implications of the recommendations at paragraph 60 of the

Ombudsman's Report with a view to a decision being taken on the Council's future approach to payment arrangements for residential care prior to the expiry of the 6 month period specified by the Ombudsman.

5 Considers what if any further action the Council should take

6 Delegates to the Executive Councillor for Adult Care, Health and Children's Services the taking of the final decision in respect of the recommendations in paragraph 60 of the Ombudsman's Report

Alternatives Considered:

1 Not to accept the recommendations of the Ombudsman in relation to issuing an apology to and compensating the complainants

2 Not to review the legal, financial and operational implications of changing the way in which payments are administered.

Reasons for Recommendation:

The Council accepts the findings set out in the Ombudsman's Report.

The Council has already reimbursed to the complainants the amount of £65.00 in September 2017 being the full amount of the Third Party Contribution they were required to pay.

The Council has offered its apologies to the complainants but will follow this up again with a formal apology as part of this process.

It is right in these circumstances that the Council accepts the Ombudsman's recommendation to pay compensation to Ms B of £300 for distress and £300 for her time and trouble in pursuing the complaint. Therefore the total amount of compensation would be £600.00.

The extent to which there is a statutory and contractual basis for the recommendations at paragraph 60 of the Ombudsman's Report is complex. The recommended changes are wide-ranging with potentially significant financial and operational implications. It is important that the various options are identified and their financial and operational consequences fully understood. This would be the purpose of the proposed review.

Background

1.1 The Local Government Ombudsman has power under the Local Government Act 1974 to investigate and issue Reports concerning allegations of maladministration or service failure.

1.2 The Ombudsman has issued the Report attached at Appendix A following an allegation of maladministration by the Council in the exercise of its adult

social care functions. The Ombudsman has concluded that the Council was guilty of maladministration and that this caused injustice to the complainant. The Ombudsman has issued a public report and included recommendations that he considers would be necessary to remedy the injustice in this particular case and more widely.

- 1.3 The Report is issued under section 31 of the 1974 Act. As a result the Report must be made public by the Council and placed before the Council so that it can consider the report and notify the Ombudsman of any action taken or proposed to be taken by the Council in response.
- 1.4 At its meeting on 15th December 2017 the full Council approved an amendment to the Constitution under which responding to an Ombudsman's report would be an executive function where the finding of maladministration was in respect of an executive function. The findings of the Ombudsman in this case relate to an executive function. Paragraph 61 of the Ombudsman's Report makes it clear that the Report should be considered by Full Council or cabinet – i.e the full Executive. Accordingly the Executive has the authority to determine the response to the Ombudsman's findings, the functions in question falling within its area of responsibility.
- 1.5 In addition the Monitoring Officer is under a separate statutory responsibility under section 5A of the Local Government and Housing Act 1989 to report to the full Executive instances of maladministration in the exercise of executive functions identified as a result of an Ombudsman's investigation. On receipt of the Monitoring Officer's Report the Executive must consider the Report and determine (a) what action (if any) the executive has taken or proposes to take in response to the report, (b) when it will take any proposed action and (c) the reasons for taking the action or, as the case may be, for taking no action.
- 1.6 This Report therefore enables the Executive to comply with the Council's obligation under section 31 of the 1974 Act and its obligations under section 5A of the 1989 Act.

Context of the Report

- 1.7 At regular intervals the Council consults with the residential care market, identifies the cost of providing residential care in Lincolnshire and on the basis of the information it has it determines a weekly payment which is the amount it would expect to pay for care to meet service user needs. This is known as the Council's Usual Costs. The range of rates were last determined in 2015. The Council is currently consulting with the market with a view to determining revised Usual Costs in March of this year.
- 1.8 In contracting with the market for residential care the Council obtains rates from homes which it seeks to keep at its Usual Costs. Some homes do contract at the Council's Usual Costs. Some homes charge the Council an amount in excess of the Usual Costs.

- 1.9 In making a placement of an individual in residential care the Council must comply with the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 and associated Guidance. Under those Regulations and that Guidance, the Council must offer to a service user at least one place at its Usual Costs and preferably more than one. Where it makes an offer of a placement at Usual Costs and the individual service user chooses to take up more costly accommodation the Council is not obliged to place the person in that accommodation unless the difference between the Usual Costs and the actual cost of the accommodation is met by a third party. This is generally referred to as a top-up. Within the Council's contract it is referred to as a Third Party Contribution. Where the Council is unable to or does not offer a person a place at Usual Costs and has instead to place a person in more expensive accommodation, the Council is liable for the full amount of the cost and a top-up cannot be required.
- 1.10 Where a placement is made and irrespective of whether there is a third party top-up, each Service User will undergo a financial assessment on the basis of which they may be assessed as required to make a contribution to the cost to the Council of arranging their care. This is known as a Service User Contribution
- 1.11 Where a placement is made involving a Service User Contribution and/or a Third Party Contribution the Council's contract provides that the Council will make payment to the Provider of the full amount of the cost of care including the Service User Contribution and the Third Party Contribution. However, before this occurs, the contract requires the Provider to make attempts to recover the Service User Contribution from the service user and the Third Party Contribution from the third party and where this does not succeed the Council pays the full amount of the cost and recovers the amount of the contributions from the service user and the third party respectively.
- 1.12 These arrangements are further underpinned by a Third Party Agreement in which the Third Party contracts with the Council to pay the Third Party Contribution and agrees with the Council to make that payment to the Provider.
- 1.13 In what follows the findings of the Ombudsman are addressed in two stages. The first stage deals with the placement including the identification of the placement and the consequential responsibilities of the Council in relation to making payment for the placement. The second stage deals with the contractual mechanisms under which the Council administers Third Party Contributions where they apply.

Stage 1 of the Ombudsman's Decision – The Placement

- 1.14 The Ombudsman's decisions in this respect are set out in the section of the Report headed "Decision" – paragraph 58. There are several elements.

1.15 *The Council failed to offer a care home within Mr C's personal budget (i.e without a top-up fee)*

The Ombudsman's findings on this point are more fully described at paragraphs 39 and 40 of the Ombudsman's Report.

The Council accepts that it did not identify at least one placement which at its Usual Costs which would not have required a third party top-up payment.

1.16 *The Council failed to pay the full fee the care home charged when no care home within the personal budget was identified*

Again this is referred to in paragraphs 39 and 40 of the Ombudsman's Report.

The Council accepts that, not having identified a placement at its Usual Costs, the Council should have met the full amount of the care home fees and no third party top-up should have been required.

In September 2017, the Council reimbursed to the third party the top up fee paid of £65.00 .

1.17 *The Council failed to explain a person's rights and the Council's duties under the Care Act*

This is referred to in paragraphs 41 to 45 inclusive of the Ombudsman's Report.

This point is accepted by the Council as there is no detailed case record of the information given. Nor were the existing information sources explicit on this point. The Council has updated the information and advice relating to all aspects of financial support and this is now live on the website (as stated in the Ombudsman's Report at paragraph 44). Assessment staff have been instructed that this information is also to be given at the point of first visit. In addition an agreement is in place with LinCA to develop a joint information leaflet to assist and support people. Finance Training has been provided to all staff within Adult Frailty and Long Term Conditions to ensure all are clear.

The above information and training includes the Council's responsibilities to offer placements at Usual Cost or meet the full cost of care.

1.18 *The Council failed to offer Mr C a personal budget.*

This is referred to in paragraphs 46 and 47 of the Ombudsman's Report.

This point is accepted. Guidance has been issued to all staff regarding Personal Budgets and letters are now issued through the Mosaic workflow to ensure people are aware and informed of their personal budget amount.

1.19 *The Council failed to intervene when Mr C was threatened with eviction from the care home. The Council failed to properly address the threatening and intimidating language used by the care home.*

This is referred to in paragraphs 53 to 56 inclusive of the Ombudsman's Report.

The commercial team and area team colleagues did liaise directly with the home both verbally and via email. The Council accepts that some of the Provider's communication was not of a standard which we would expect. Learning has been taken from this to ensure a more robust response would be available if this was to occur again.

1.20 Although, as can be seen, the Council does not accept all of the statements made in the Ombudsman's Report, the Council does accept and has accepted the overall finding that the Council was at fault. It is recommended that the Council apologise for the faults identified in paragraphs 1.15 to 1.19 inclusive. A number of actions have been taken, prior to the report being published, to ensure that the risk of this happening again are minimised:

- Staff guidance has been issued to ALL frontline staff across Adult Care incl. Specialist Services and EDT – issued on 19 September 2017
- A comprehensive Action Plan has been developed and shared with all teams across Adult Care on 20 October 2017. A copy of the Action Plan is attached at Appendix B to this Report
- Corporate and Adult Care Complaints Process and Procedure has been altered for a clear pathway of complaints handling and who is responsible for responses as from 27 September 2017
- A Finance training pack has been developed and delivered to all AFLTC teams between 3 November 2017 and 6 December 2017
- Finance Information Packs relating to all areas of care support were updated and reissued on the website. Frontline staff also issue these at the point of assessment. Date issued 5 May 2017
- The Financial Information Pack information was also Included in a Practice Bulletin issued 17 May 2017
- Relevant legal advice and support has been part of the process to ensure full compliance with statutory requirements.

Stage 2 of the Ombudsman's Decision – Payment Arrangements

1.21 As set out above, the Council pays providers of residential and nursing fees based on the Council's Usual Costs or a price bid by the Providers. The Council's Framework Agreement provides for the Council to be responsible, ultimately, for the full amount of the cost. However the Framework

Agreement does provide for the Provider to seek to recover payment from the service user and third party before being entitled to payment from the Council. The Third Party Agreement does require the third party to make payment to the Provider as part of this arrangement with the Provider.

- 1.22 The Ombudsman's views of this arrangement are set out in a further decision within paragraph 58 of the Ombudsman's Report as follows:-

The Council failed to offer the option to pay the top-up fee to the Council

This is referred to in paragraphs 48 to 52 of the Ombudsman's Report.

- 1.23 In this respect, the Council accepts that it should not have told Ms B that it did not become involved in third party agreements and should not have left Ms B to make the arrangements with the care home. As referred to above the Third Party Agreement is between the Council, the third party and the Provider so the Council is always involved in top-up agreements. Social Workers have been reminded of this and the need for them to have responsibility in the signing of the Agreement to which the Council is in fact a party.

- 1.24 The Council also accepts that there was a failure in this case to explain the nature and effect of the Council's Framework Agreement and Third Party Agreement. In particular there was no explanation of the fact that the third party would be contracting with the Council and while the Council required the care home to seek payment of the Third Party Contribution, if this was not paid the Council would pay it and seek contribution from the third party.

- 1.25 It is recommended that the Council apologises for the faults identified in paragraphs 1.23 and 1.24.

- 1.26 In addition to this, the Ombudsman has made a finding that the Council's whole Third Party Contribution payment arrangements amount to a breach of the Council's responsibilities under the Care and Support Statutory Guidance. The Ombudsman's argument is set out in paragraphs 50 to 52. In essence the Ombudsman has found that the Council's payment arrangements under which, as the Ombudsman puts it, the Council did not offer the third party an option of making payment to the Council, departed from Guidance without sufficient reason and that this amounted to fault.

- 1.27 On the basis of this the Ombudsman has made a number of recommendations as to the way in which the Council structures and administers such arrangements in future. They are set out in paragraph 60 of the Ombudsman's Report as follows:-

- Review its procedures to ensure that people are offered the option to pay the top-up fee directly to the Council;
- Review its top-up fee contract to reflect the option to pay the top-up fee directly to the Council;

- Review existing top-up agreements to bring them into line with the Care Act; and
 - Assess whether staff are aware of the Council's duties under the Care Act and provide further training if necessary.
- 1.28 Before moving on to address these recommendations it is worth pointing out that the Council engaged in lengthy closely reasoned correspondence with the Ombudsman setting out in detail the Council's payment arrangements (including copies of the relevant contracts) and the Council's own interpretation of the Statutory Guidance. In particular, the Council argued strongly that the Council's Third Party Agreement already provides for the payment of the Third Party Contribution to the Council and insofar as the third party does make payments to the Provider that is part of a purely administrative arrangement which is not contrary to the Guidance.
- 1.29 It is unfortunate that the Ombudsman did not see fit to reflect any of the Council's arguments in the final Ombudsman's Report or acknowledge any of the complexities or uncertainties of the Ombudsman's own interpretation. This has led to an inappropriately simplified and negative characterisation of the Council's position. The Council does not accept, for instance that it has ignored the guidance (see paragraphs 51 and 52 of the Ombudsman's Report).
- 1.30 However, the Ombudsman did not agree with the Council and the Council must now accept the Ombudsman's conclusion. The Council must also accept the Ombudsman's judgment that the Council departed from Guidance without a sufficient reason. It must therefore now put its mind to the Ombudsman's recommendations in paragraph 59 (insofar as they relate to the payment issue) and paragraph 60 of the Ombudsman's Report.
- 1.31 In order to come to a conclusion on this element of the Report it is necessary to carry out a full review of the options available to the Council. If the Ombudsman's analysis is correct the Council could be looking at a fundamental change to the way in which the Council administers Third Party Contributions with potentially significant legal, financial and operational implications. Although the Ombudsman's Report relates to the payment arrangements for Third Party Contributions a proper review would need also to take into account not just Third Party Contributions but also Service User Contributions.
- 1.32 Current data from November 2017 confirmed that across all service groups 428 residential and nursing providers receive payments relating to 3,200 service users in long term and short term care. The current Residential & Nursing Care Budget totals £103.8m, with residential income budgeted to receive £25.3m over the same period. The value of third party top ups is estimated to be in the region of £0.375m in 2017/18.
- 1.33 In general terms there are a number of options which could involve the Council treating the payment of Service User Contributions differently from Third Party Contributions or (as the Ombudsman seems to be

recommending) offering different payment arrangements either at the option of the third party or depending on whether the third party agrees.

1.34 However, such options have obvious drawbacks for the Council and indeed for Providers in terms of having to manage a number of different payment arrangements depending on the type of payment and even potentially the identity of the third party. These will need to be subject of a financial and legal analysis but they are not a preferred way of proceeding at this stage.

1.35 In terms of preferred options at this stage there are two:-

- Maintain the status quo. This will require a full review of the legal basis of the Ombudsman's finding but in principle it appears to leave open the potential to justify the current arrangements as being a departure from the guidance but for sufficient reason. Unless and until a full review has been undertaken of the financial and operational impacts of the options it will not be known if such an option can legally be pursued;
- Change the payment arrangements for both the Service User Contribution and the Third Party Contribution so that the Council makes the payments to the Provider and recovers both direct from the service user and third party respectively without any involvement of the Provider.

As referred to above, there are likely to be significant legal, financial and operational implications of a change to a different process.

1.36 Potential impacts include:-

- a) The financial functions of Mosaic will not be implemented until the summer of 2018 at the earliest. At this point it is unknown if the present system, Abacus, can switch to a different payment arrangement without substantial investment, this is currently being investigated by the system provider Servelec.
- b) Direct effects on Serco's organisational structure both within their Adult Care Financial Assessment and Credit Control teams, income and existing adult care payment functions including additional resources and overheads.
- c) Additional separate billing runs per 4 weekly cycle with additional customers to be managed through Agresso is likely to produce around 8,000 additional items to be issued and chased through credit control and income processes (including payment systems).
- d) A change control notice to be negotiated with Serco with a likely knock-on increase in the price under the Serco contract. Those conversations have not yet taken place.
- e) Increased demand on services delivered by the Adult Care & Community Wellbeing Finance Team in monitoring the impact of

changes to process including an increase in bad debt, third party top up and payment queries.

- f) A risk of additional demands upon assessment and care management teams capacity but at this time it is not possible to quantify the possible impact.
- g) A requirement to ensure that fieldworkers are aware of any changes which will require additional training resources.
- h) Transfers the risk of non-payment to the Council.
- i) An increased legal resource requirement in order to process claims for non-payment that progress to the courts
- j) Potential impact on council cash flow through the payment of additional fees to providers

1.37 The review will assess and seek to quantify as much as possible all of these potential impacts and any others through discussion with partners and learning from the experience of other authorities.

Ombudsman's Recommendations

1.38 The Ombudsman has recommended at paragraph 59 of the Ombudsman's Report that the Council

- a) Acknowledge the faults and apologise to Ms B, Mr C and Mrs C

It is recommended that the Council acknowledges the faults identified in the Ombudsman's Report and apologises as set out in paragraphs 1.20 and 1.25.

- b) Reimburse the top-up fee of £65.00.

This action was completed and reimbursed in September 2017

- c) Pay £300 to reflect the complainant's distress.

It is recommended that the Council accept this recommendation

- d) Pay the complainant £300 for her time and trouble pursuing the complaint.

It is recommended that the Council accept this recommendation

1.39 In relation to the recommendations in paragraph 60 of the Ombudsman's Report it is recommended that the Executive approves the carrying out of a full review of the legal, financial and operational implications of those recommendations with a view to a decision being taken on the Council's

future approach to payment arrangements for residential care prior to the expiry of the 6 month period specified by the Ombudsman.

Legal Issues:

Equality Act 2010

- 1.40 Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:
- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
 - * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
 - * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 1.41 The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation
- 1.42 Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:
- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
 - * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
 - * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low
- 1.43 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities
- 1.44 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding
- 1.45 Compliance with the duties in section 149 may involve treating some persons more favourably than others
- 1.46 The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

The matters set out in this Report relate generally to elderly people and people with a disability. People with those protected characteristic will receive an improved service as a result of the remedial steps identified in the Report.

Any implications of different payment arrangements for people with a protected characteristic will be assessed as part of the proposed review.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

1.47 The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision

There are no direct implications of this Report for the JSNA or the JHWS.

Crime and Disorder

1.48 Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

No implications relevant to section 17 of the Crime and Disorder Act 1998 have been identified in respect of this Report

Conclusion

This Report places before the Executive the findings of an investigation by the Local Government and Social Care Ombudsman which identified injustice caused by maladministration in the conduct of executive functions in the area of Adult Care.

The Executive is invited to consider and accept the Ombudsman's recommendations as set out in the Report. Further work is required to assess the impacts of the Ombudsman's findings in relation to its payment arrangements for third party top-ups and a detailed review is proposed followed by a further report to the Executive Councillor for Adult Care, Health and Children's Services.

Legal Comments:

The Local Government Act 1974 requires an Ombudsman's Report under section 31 of that Act to be placed before the Council. Under the Council's Constitution that is an executive function where the maladministration is identified is in relation

to the exercise of an executive function. The Ombudsman requires the Report to be placed before the full Executive. The Executive must consider the recommendations of the Ombudsman and the actions taken and proposed to be taken by the Council.

In addition under section 5A of the Local Government and Housing Act 1989 the Monitoring Officer has a statutory responsibility to report to the full Executive instances of maladministration in the exercise of executive functions identified as a result of an Ombudsman's investigation. On receipt of the Monitoring Officer's Report the Executive must consider the Report and determine (a) what action (if any) the executive has taken or proposes to take in response to the report, (b) when it will take any proposed action and (c) the reasons for taking the action or, as the case may be, for taking no action.

In the absence of challenging the findings of the Ombudsman by way of Judicial Review the Council must accept the findings of maladministration that are made. The Council is not obliged to accept the Ombudsman's recommendations as long as it has reason for not doing so.

The decision is within the remit of the Executive.

Resource Comments:

The outcome of the investigation by the Local Government and Social Care Ombudsman into allegations of maladministration by Lincolnshire County Council has resulted in a £600 payment to the service user in question. The report also has potential implications on the way in which providers of Residential and Nursing Care are paid. To that end further work will be required to ascertain the financial impact of those implications over the coming months.

Consultation

Has The Local Member Been Consulted?

N/A

Has The Executive Councillor Been Consulted?

Yes

Scrutiny Comments

The Adults and Community Wellbeing Scrutiny Committee considered this report on 14 February 2018 and agreed to support the six recommendations to the Executive. The Committee requests that it considers the full review of the legal, financial and operational implications of the recommendations in paragraph 60 of the Local Government and Social Care Ombudsman's report.

Has a Risks and Impact Analysis been carried out?

Yes

Risks and Impact Analysis

See the body of the Report

Appendices

These are listed below and attached at the back of the report

Appendix A	Ombudsman's Report
Appendix B	Action Plan

Background Papers

No Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of this Report.

This report was written by Carolyn Nice, Assistant Director (Adult Frailties and Long Term Conditions), who can be contacted on 01522 553762 or Carolyn Nice@lincolnshire.gov.uk and David Coleman, Chief Legal Officer who can be contacted on 01522 552134 or David.Coleman@lincolnshire.gov.uk .

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

**Investigation into a complaint against
Lincolnshire County Council
(reference number: 16 003 268)**

17 November 2017

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

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

Investigation into complaint number 16 003 268 against Lincolnshire County Council

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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

Ms B – the complainant

Mr C – Ms B's father

Mrs C – Mr C's wife

Report summary

Failure to carry out duties under the Care Act

Ms B says the Council failed to offer her father, Mr C, a care home without a top-up fee and did not offer to pay the full fee the care home charged. It did not explain its duties under the Care Act.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice to Ms B, Mr C and Mrs C, we recommend the Council takes the following actions within three months. The Council should:

- acknowledge the faults and apologise to Ms B, Mr C and Mrs C;
- reimburse the top-up fee of £65;
- pay Ms B and the family £300 to reflect their distress; and
- pay Ms B £300 for her time and trouble pursuing the complaint.

We recommend the Council, within six months, brings its procedures in line with the Care Act by:

- reviewing its procedures to ensure that people are offered the option to pay the top-up fee directly to the Council;
- reviewing its top-up fee contract to reflect the option to pay the top-up fee directly to the Council; and
- reviewing existing top-up agreements to bring them in line with the Care Act.

Introduction

1. The Council placed Mr C in a care home on an emergency basis. Ms B complains that the Council failed to:
 - offer a care home without a top-up fee;
 - pay the full fee the care home charged when no care home without a top-up fee was identified;
 - explain a person's rights and the Council's duties under the Care Act;
 - offer Mr C a personal budget;
 - offer the option to pay the top-up fee to the Council;
 - intervene when Mr C was threatened with eviction from the care home; and
 - properly address the threatening and intimidating language used by the care home.

Legal and administrative background

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**)

Care Act 2014

3. The Care Act 2014, the Care and Support Statutory Guidance 2014 (updated 2017) and the Care and Support (Charging and Assessment of Resources) Regulations 2014 set out the Council's duties towards adults who require care and support and its powers to charge.
4. The Act says that, if a person needs residential care and their capital falls below the threshold of £23,250, they will be eligible for council funding to pay for this. However, a top-up fee may still need to be paid, in certain circumstances.

What is a personal budget?

5. The Council has a duty to assess adults who have a need for care and support. If the needs assessment identifies eligible needs, the council will provide a support plan which outlines what services are required to meet the needs and a personal budget which calculates the costs of those services. (**Care Act 2014, section 24**)

When is a top-up fee payable?

6. When it has been decided that a person's needs are best met in a care home, the council must ensure that at least one accommodation option is available within the person's personal budget and it should ensure that there is more than one of those options. The council must ensure that the person has a genuine choice of accommodation. **(Guidance, section 8.37)**
7. However, a person is able to choose alternative options, including a more expensive setting, if a third party or in certain circumstances the resident is willing and able to pay the additional cost (the top-up fee). An additional payment must always be optional and never as a result of commissioning failures leading to a lack of choice. **(Guidance, section 8.37)**
8. If no suitable accommodation is available at the amount identified in the personal budget, the council must arrange accommodation in a more expensive setting. In those circumstances, the council should increase the personal budget to ensure the needs are met.

Council's duties when a person chooses to pay a top-up fee.

9. The Guidance says that, if a person chooses a care home that is more expensive than the amount identified in the personal budget and a top-up fee has to be paid, the council has to **(Guidance, annex A, sections 22 to 24)**:
 - ensure the person paying the top-up understands the full implications of this choice, remembering that this is often at a point of crisis;
 - provide the person with sufficient information and advice so they understand the terms and conditions, including actively considering the provision of independent financial information and advice;
 - ensure the person is willing and able to meet the top-up, recognising that this may be for some time in the future; and
 - ensure the person enters a written agreement with the council, agreeing to meet the cost.

Who is the top-up fee paid to?

10. The Guidance says councils will need to consider the individual circumstances of the case and should deter arrangements for top-up fees to be paid directly to the care home. The Guidance says there are three options **(Guidance, annex A, section 29)**.
 - The council treats the top-up as part of the cared for person's income and recovers the costs from the person. This is on the assumption that the third party pays the top-up to the person in the care home.

- The council agrees with the cared for person, the third party and the provider that the top-up is paid directly to the care home. The guidance says this is not the recommended approach.
- The third party pays the top-up to the council and the council then pays the full amount to the care home.

Who is responsible for the costs?

11. Whatever the option chosen, the council remains responsible for the total cost of that placement. If there is a break down in the arrangement to pay the top-up, the council is liable for the fees until it has either recovered the costs or made other arrangements to meet the person's needs. (**Guidance, annex A, section 28**)

What information and advice should the council give?

12. The council should provide information about the choices open to individuals and should explain a person's rights under the Care Act. This must include information about the different care providers and advice to help people understand the charges so that people can make informed financial decisions.

Market shaping and commissioning of adult care and support

13. Councils must promote the efficient and effective operation of a market in services for meeting care and support needs to ensure that a person has: (**Care Act 2014, section 5**):
 - a variety of providers to choose from who provide a variety of services;
 - a variety of high quality services to choose from; and
 - sufficient information to make an informed decision about how to meet the needs in question.
14. Councils must not undertake any actions which may threaten the sustainability of the market as a whole, for example, by setting the fee levels below an amount which is not sustainable for the provider in the long term. (**Guidance, section 4.35**)

How we considered this complaint

15. We have produced this report following the examination of relevant files and documents and interviews with the complainant and relevant employees of the Council.
16. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

Investigation

Key facts

17. Mr C is an elderly man who has dementia and physical disabilities. He was living at home with support from his wife. He was eligible for council funding and a care package for care at home was in place.
18. At the end of March 2016 Mr C's condition deteriorated and his needs could no longer be met at home. His daughter, Ms B contacted the Council asking for urgent help. The Council agreed that an emergency residential placement was needed, initially as a respite option.
19. The social worker contacted Ms B and said she had found a care home for Mr C. She explained the Council would pay its usual rate but, as the care home's rate was higher, the family would need to pay a top-up fee. The top-up fee was £60, but the family could negotiate a lower price with the care home if it was not able to pay. Ms B said she thought she had no other option as this was a crisis situation and she therefore agreed.
20. Mr C moved to the care home on 30 March 2016. The care home agreed to a reduced top-up fee of £20 per week.
21. Ms B contacted the Council on 29 April 2016. She had read the Care Act and now understood more about top-up fees. She told the Council that it had a duty to offer Mr C a placement without a top-up fee and this had not happened. The social worker's response was that Ms B would need to ring the care homes herself and ask about top-up fees as a lot of the care homes charged them. Ms B said she may have to move Mr C to another care home as her mother could not afford the top-up fee.
22. In May 2016 the care home contacted the Council as the top-up fee and contribution for Mr C had not been paid. The care home said it wanted to evict Mr C within 7 days. The care home said it had not yet informed the family of this as the family had been 'difficult' last week. The care home was worried that, if it informed the family, the family would not pay at all.
23. Ms B assured the Council she would pay but she wanted to know what she was paying and whether it was legal for the care home and the Council to ask for this top-up fee. It was her understanding that her mother should not have been asked to make this payment. She said she wanted to speak to somebody at the Council about the legalities of the top-up fee and the Council's responsibility to find a care home without them.
24. The care home wrote to Ms B about the top-up fee on 21 April 2016 and said: "*The top-up rate was set in consultation with the council and reflects the fact that the council has been unable to raise the care fees they pay us sufficiently to meet our higher staffing and running costs*".
25. On 10 May 2016, the care home wrote to Ms B giving Mr C 14 days notice to leave the care home. The care home's email dated 12 May 2016 said: "*Third Party contributions were introduced to meet the costs of the Living National Wage and mandatory pensions*".

for staff implemented by the government and timely payment of these fees is imperative for us to pay the wages of our staff. The families of our council funded residents are understanding of this financial reality and pay the third party contributions four weeks in advance. Unfortunately, your account is 42 days in arrears. You can imagine the financial predicament we would be in and the distress it would cause if all resident accounts were in arrears”.

26. The care home’s second letter dated 18 May 2016 said: *“Your refusal to sign the contract was duplicitous and unacceptable while you continued to accept a service from the care home. Your behaviour in refusing to make this payment makes the work of the Adult Social Care Services even more difficult at an already challenging time for the social care sector. I am, of course, taking legal advice on the matter and my solicitor will handle any further communication with you”.*
27. Ms B was very upset by the care home’s threats and the language in the letter and contacted the social worker. She tried to speak to somebody at the Council about the legality of top-ups and continued to contact the Council desperate for help. A note on the files records the care home had spoken to the Council and the Council had confirmed the care home could give notice to Mr C as the family were aware of this and were actively looking for another home for Mr C without a top-up fee.
28. Ms B wrote to the care home pointing out how its understanding of the law on the fees was flawed and provided links to the correct law and guidance. The care home said in its email dated 25 May 2016: *‘Many thanks for the information you have provided. I do agree that it would be far simpler were the county council to fund the full cost of care but unfortunately this is not the case and each year the funding we receive falls below the true cost of care’.*
29. A best interest meeting took place on Friday 20 May 2016 and a care home without a top-up was found for Mr C. The plan was to move Mr C to this care home on 24 May 2016 when the eviction deadline ended.
30. However, later that day, the new care home called to say it had given Mr C’s room to somebody else. This meant that Mr C still had no care home to move to and was about to be evicted.
31. The social worker contacted 4 care homes to find a place for Mr C. She found two care homes which had vacancies but they both charged top-ups. The social worker told Ms B to find a care home without a top-up over the weekend.
32. Ms B contacted 23 care homes over the weekend and found only one care home without a top-up. Mr C moved to this care home the following week.

Ms B’s complaint

33. Ms B complained to the Council in June 2016. She pursued her complaint for several months as she tried to clarify different issues. We have summarised her complaint as follows.
- The Council failed to give her appropriate information and advice about her rights under the Care Act at every stage of the process. She said the information had been poor and misleading and she doubted whether the social workers knew the correct process and the Council's duties.
 - The Council never informed her it had a duty to find a care home without a top-up and never told her it had a duty to pay the care home fees if it could not identify a care home without a top-up.
 - The family should never have been asked to pay the top-up as the Council had never offered Mr C a care home without a top-up fee.
 - The Council should have given Mr C a personal budget.
 - The Council should have intervened when the care home was threatening to evict Mr C.

The Council's response

34. The Council said:
- the procedures were all online and in the Council's leaflets;
 - it expected care homes to pursue the family for payment of the top-up fee, but only if the appropriate paperwork had been completed. In this case, the paperwork had not been signed so the care home should not have acted as it did. It later agreed it should have paid the top-up fee;
 - it could not become involved in the choice of care homes as it had to remain neutral;
 - it did not provide personal budgets to residents of care homes as it had agreed rates of payment;
 - the language used by the care home was insensitive and it had recommended that the care home address this directly with Ms B. It monitored correspondence between the care home and service users as part of its contract with them.
35. The Council wrote several emails where it clarified its position.
- *"The choice of care home is an area where the Council would not be involved in directly as we have to remain neutral in terms of the market. If called upon we may be able to give details of which homes have vacancies."*
 - *"In relation to choice of care home, the Council has to be careful to remain neutral; we are not allowed to promote individual homes. There is, at present, pressure on*

care home beds, which meant that there are times when there are a very limited number available and real choice can be quite difficult in an emergency, especially choice which does not involve a top-up... This is a particularly difficult area at present as there are a very limited number of care homes in the area without top-ups and for obvious reasons these homes are often full.”

- *“A personal budget does not currently apply to residential or nursing placements in Lincolnshire and there are agreed rates which the County Council develop and consult with the market before publishing.”*

36. The difficulties Ms B and the social worker had in finding a care home without a top-up fee, the Council’s responses to the complaint and the care home’s correspondence suggested that there may be a wider problem of a shortage of care homes without a top-up fee.
37. We therefore contacted the Council to ask further questions about market shaping. The Council’s website has details of the Council’s market position statement, joint strategic needs statement and joint health and wellbeing strategy, in line with the Care Act. The Council asked an outside agency to conduct an independent evaluation of the residential care market in 2015 and this contributed to deciding how much the Council pays to care homes. It is going through a similar exercise at the moment to set the rates for the future.
38. We asked the Council how many care homes there were without a top-up fee on the day we spoke (13 April 2017). The Council said it had 754 vacant beds across the county and 220 did not charge a top-up fee. This could be broken down by area. The area of Lincoln (where Mr C was living) had 30 vacancies without a top-up fee. It explained that, every week, it sends a list to practitioners which shows the available care homes without a top-up fee in the area so they can help people in identifying care homes.

Conclusions

Choice of accommodation and charging of the top-up fee

39. There was fault in the Council’s actions in March 2016 when an urgent placement had to be found for Mr C. The Council did not identify a care home without a top-up fee. Therefore it should have paid the entire cost of the care. Instead the Council told the family it had to pay the top-up fee which is fault.
40. When Mr C was facing imminent eviction in May 2016, the Council repeated the same mistake and did not offer a place without a top-up fee or explain to Ms B that it would pay the entire fee if it could not find a place. Instead it expected Ms B to find a placement during the weekend.

Information and advice

41. The Council failed to explain to Ms B what the Council's duties were. It never told her it had a duty to identify at least one place without a top-up fee. It also did not say that it was responsible for paying for the placement if no place without a top-up fee had been identified.
42. Ms B looked up the advice on the Council's website but this was not clear and there was no clear mention of the fact that the Council had a duty to find a care home without a top-up fee or that it would pay the costs if it could not find one. This was also fault.
43. We were, in addition, concerned about the Council's comments in its written replies to Ms B and us. Ms B repeatedly asked the Council whether, in other cases, it informs people of their right to a care home without a top-up. The Council never clearly answered this question. It said it gave people the general information about the charging and general information about care homes. It said it could not recommend a particular home because it had to remain 'neutral in terms of the market' and said it was not allowed to promote individual homes.
44. We were therefore concerned whether other people had suffered the same problems as Ms B. We spoke to the Council and it acknowledged that the information on its website was previously not as clear it should be. It said it recently changed its online information. We have read the Council's online information on top-up fees and it is clearer than before.
45. The Council said it also changed its process. It says it gives people the directory which includes all the care homes, but does not give information about availability or whether they charge top-up fees. If a person chooses a care home which charges a top-up fee, the Council will explain to the person that they have a right to be offered a care home without a top-up. It will offer an alternative without a top-up fee if this is what the person wants. If no alternative care home without a top-up fee is available, it will offer the lowest cost alternative and pay the top-up fee.

Personal budget

46. The Council did not give Mr C a personal budget and said in the complaints correspondence that it never provided personal budgets to residents in care homes. This is fault as the Care Act says councils have a duty to provide personal budgets.
47. The Council has clarified that this has changed and that residents in care homes now have a personal budget.

No option to pay the top-up fee to the Council

48. The Council told Ms B that it did not become involved in the top-up agreement as this was a matter between the care home and the person paying the top-up fee. This is fault. The council has told us that it has, since then, changed its procedures and the social worker now becomes involved in the signing of the agreement.
49. The Council also failed to offer Mrs C the option to pay the top-up fee to the Council. It says it never does this as it always expects people to pay the fee directly to the care home. It acknowledges that this is not the preferred option under the guidance but says

there is nothing stopping them in law from following that route. It says it has taken this approach because it is cheaper and less of an administrative burden on the Council.

50. The Ombudsman considers whether a Council's actions are maladministration. Not every departure from guidance is maladministration and if the Council had, for example, chosen to move away from one part of the guidance for well-considered and legitimate reasons, the Ombudsman would not have found fault.
51. However that is not the case here. The Council has ignored three fundamental concepts of the guidance which are:
 - Councils will deter arrangements for top-up payments to be paid directly to a provider.
 - Any arrangement to make payments directly to the provider will only be *by agreement* with the person.
 - Councils should consider the individual circumstances of each case.
52. It has ignored the guidance without adequately providing reasons apart from administrative convenience. It has adopted a blanket policy of direct payment to the care home which is far from the letter and the spirit of the guidance. This is maladministration.

Failure to intervene when the care home threatened eviction

53. There was fault by the Council in its response to the threat of eviction by the care home.
54. Firstly, Mr C should not have been put in the position where he was being threatened with eviction because of non-payment of the top-up fee. Ms B was right in questioning the requirement to pay and the Council should have intervened immediately and paid the entire fee.
55. Secondly, the fault was made worse by the fact that the Council did not offer Mrs C the option to pay the top-up fee to the Council. One of the reasons why the legislation says that councils should offer this option is to avoid situations such as this one. Ultimately the Council is responsible for the payment of the top-up fee, not the third party. If the top-up fee is paid to the Council, any failure to pay is dealt with by the Council and should not result in a threat of eviction by the care home.
56. Finally, the language used by the care home in its letters to Ms B was inappropriate and the Council should have intervened sooner and more directly. The Council is responsible for the actions of those who are providing a service on its behalf.

Injustice

57. Ms B and Mr C suffered weeks of distress as they were worried that Mr C would be evicted. They knew Ms B's mother could not continue to pay the top-up fee and needed help but were not given this help. Instead of assisting Ms B in her search for a suitable care home, the Council put the burden on her to find somewhere suitable.

Decision

58. The Council did not act in line with the Care Act 2014 or the guidance when it responded to Ms B's request for assistance in support for Mr C. The Council failed to:
- offer a care home within Mr C's personal budget;
 - pay the full fee the care home charged when no care home within the personal budget was identified;
 - explain a person's rights and the Council's duties under the Care Act;
 - offer Mr C a personal budget;
 - offer the option to pay the top-up fee to the Council;
 - intervene when Mr C was threatened with eviction from the care home; and
 - properly address the threatening and intimidating language used by the care home.

Recommendations

59. To remedy the injustice to Ms B, Mr C and Mrs C, we recommend the Council takes the following actions within three months. The Council should:
- acknowledge the faults and apologise to Ms B, Mr C and Mrs C;
 - reimburse the top-up fee of £65;
 - pay Ms B and the family £300 to reflect their distress; and
 - pay Ms B £300 for her time and trouble pursuing the complaint.
60. We recommend the Council, within six months, brings its procedures in line with the Care Act by:
- reviewing its procedures to ensure that people are offered the option to pay the top-up fee directly to the Council;
 - reviewing its top-up fee contract to reflect the option to pay the top-up fee directly to the Council;
 - reviewing existing top-up agreements to bring them in line with the Care Act; and
 - assessing whether staff are aware of the Council's duties under the Care Act and provide further training if necessary.

61. 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 or Cabinet and we will require evidence of this. (***Local Government Act 1974, section 31(2), as amended***)

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Action Plan	Team	What happened	Future actions /Learning Points
<p>From Ombudsman recommendations: LGO reference 16 003 268</p> <p>The Ombudsman found that the Council did not find a care home without a top up Fee (TPTU) and did not offer to pay the full fee the care home charged. This meant that a review of current arrangements was needed to ensure they are in line with the Care Act.</p>	<p>Area AF&LTC Team</p>	<p>An emergency placement took place this included a TPTU; family were told to pay this; family were asked to look for a care home without a TPTU if this was required.</p>	<p>All staff will promote the offer of choice and information to enable people to make informed decisions.</p> <p>A choice of one care home without a TPTU will be offered within Lincolnshire. This will be recorded within Mosaic case notes, detailing the offer made.</p> <p>Guidance has been simplified and clarified within new packs for staff to use as guidance, staff to ensure that this is followed irrespective of planned; STC or emergency placement is made. https://www.lincolnshire.gov.uk//Download/105249 The relevant financial information will be given to citizen or relative and again recorded on case note, detailing who it was given to and when.</p> <p>Finance training which Locality leads and finance colleagues have developed is being rolled out to all Adult Frailty teams incl Hospital Team from end Nov/Dec.</p>

<p>The Omdsan found that the Personal Budget for Mr C was not explicit and confused information was provided regarding the PB information received.</p>	<p>Area AF&LTC Team & Lead Professional Team</p>	<p>Mr C's family were given conflicting advice relating to personal budgets in relation to residential care and support which was not accurate.</p> <p>A STC guide has been produced to cover differing types of placements made to support staff to adhere to procedure this was disseminated to ALL adult care staff in Sept 2017.</p> <p>ALL citizens in receipt of services have a personal budget agreed. This has been reiterated to staff through the Learning and Development Team. In addition a Personal Budget template letter has been implemented and ALL citizens in receipt of a service will receive a copy of this and it will be uploaded to their file.</p>
<p>The Ombudsman found the information was too general and did not specify that the Council will pay the TPTU if a placement without one can't be found.</p>	<p>Area AF&LTC Team & Commercial Team</p>	<p>Mr C's family were given unhelpful and generalised advice. The reimbursement of the TPTU happened only after complaint was made</p> <p>The website is updated and information to public is Care Act Compliant : https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#AnnexA</p>
<p>The Ombudsman found that the Council did not intervene immediately and directly, causing unnecessary stress and upset</p>		<p>Mr C's family was upset by the way the care home threatened them, this was felt to have not been properly addressed by the Council.</p> <p>New complaint handling flowchart has been created and disseminated to all teams. Clarifying how provider and contractual complaints should be managed (attached). This demonstrates that responsibility for complaint handling is held within area teams with support and advice from the Commercial team.</p>

<p>The Ombudsman also found that there should be opportunity for the third party to pay the Council the top up fee; though this point is yet to be concluded and is under review.</p>		<p>Introduction of Principal Practitioner for Complaints and Quality- who has implemented a coordinated approach to complaint handling, improving customer expectations of response and quality of communication. This includes QA of complaint responses.</p> <p>Complaint Procedure refreshed with template letters included promoting good quality standardised responses.</p> <p>Online complaint training available to all AC staff; this emphasises every employee's role in early intervention and communicating with Service Users.</p> <p>Half Day face to face training created and made available for all staff in AC rolled out OCT 17.</p>
<p>LGO Ombudsman > Scenario of Case.</p>	<p>The Ombudsman found that the Council failed to offer Mr C a care home without a top up fee and did not offer to pay the full fee the care home charged. That the Council did not explain its duties under the Care Act, as appropriate information and advice was not given to Mr C's family. A personal budget was not offered and the Council should have intervened more rather than leaving family members to intervene in issues of fees and eviction threats.</p> <p>When Mr C's family looked up information on the LCC website information was not clear in that it was the Council's duty to find at least one home without a top up fee; that general information is given to people rather than clear information about top up fees and choice.</p> <p>The Ombudsman found that Mr C and family suffered distress whilst eviction was threatened and that the 'burden' to find an alternative care home was placed on family by LCC.</p>	

The Ombudsman also found that there should be opportunity for the third party to pay the Council the top up fee; though this point is yet to be concluded.

All actions on Plan completed: (date)

Signed: (LP) (AM)

Actions for 'others' identified on plan and forwarded to (named person/s)

By (name) On (date)

.....

By (name) On (date)

.....

By (name) On (date)

(Note) – The plan will always include method of cascading information/learning outcomes.

(Always include this page as last page of action plan)

Version 1 June 2017

Open Report on behalf of Pete Moore, Executive Director of Finance and Public Protection

Report to:	Executive
Date:	06 March 2018
Subject:	Council Business Plan 2017 - 2018 Performance Report, Quarter Three
Decision Reference:	I014184
Key decision?	No

Summary: This report presents an overview of performance for Q3 against the Council Business Plan.

Executive can view performance on the web on the Lincolnshire Research Observatory using this [link](#)

Recommendation(s):

That Executive:-

1. Note and consider 2017/2018 Quarter 3 performance.
2. Approve the proposed changes to reporting as set out in this report.

Alternatives Considered:

1. No alternatives have been considered to recommendation 1 as it reflects factual information presented for noting and consideration.
2. The alternative to recommendation 2 is not to make any changes in reporting as recommended in this report and instead to continue to report against the measures as published in the Council Business Plan 2017/2018. However, without the recommended changes, these measures are not considered to assist the Executive in obtaining an accurate picture of the organisation's performance.

Reasons for Recommendation:

To provide the Executive with information about Quarter 3 performance against the Council Business Plan 2017/2018 and propose changes to reporting to assist the Executive in monitoring that performance in future.

1. Background

The Council Business Plan 2017/2018 was approved by Council on 24th February 2017. This report provides the Executive with highlights of Q3 performance. The full range of infographics is available to view on this [link](#)

Headlines Quarter 3 performance

Of the 14 commissioning strategies reported in Q3:-

9 performed really well (all measures reported in Q3 achieved the target);
2 performed well (all measures except 1 reported in Q3 achieved the target);
3 had mixed performance (some measures achieved and some measures did not achieve the target in Q3).

The following 3 commissioning strategies are reported annually in Q4:-

[Readiness for school](#)

[Sustaining and developing prosperity through infrastructure](#)

[Learn and achieve](#)

The good news

The following 9 commissioning strategies performed really well (all measures reported in Q3 achieved the target):-

[Children are safe and healthy](#)

[Community resilience and assets](#)

[How we effectively target our resources](#) (Combination of 3 commissioning strategies)

[Readiness for Adult Life](#)

[Safeguarding adults](#)

[Specialist adult services](#)

[Sustaining and growing business and the economy](#)

The following 2 commissioning strategy performed well (all except 1 measure reported in Q3 achieved the target)

[Adult Frailty, long term conditions and physical disability](#)

[Carers](#)

Mixed performance (some measures achieved and some measures did not achieve the target)

The following 3 commissioning strategies continue to have mixed performance:-

[Protecting the public](#)

[Protecting and sustaining the environment](#)

[Wellbeing](#)

It is worth noting that performance overall has improved for Carers and Readiness for Adult Life commissioning strategies compared with Q2. Both reported mixed performance in Q2. Carers is now performing well and Readiness for Adult Life is performing very well.

Although the following measures did not meet the target in Q2, performance improved in Q3 as services had forecast and both measures have achieved the

target in Q3:- '16-17 year old Looked After Children participating in learning' and 'Health and Social Care staff trained in Making Every Contact Count (MECC)'

Appendix A provides a summary of the measures that did not achieve the target in Q3.

Proposed changes to reporting performance against the Council Business Plan 2017/18

Juvenile re-offending measure

The relevant Executive Councillor has been consulted and recommends that as the Ministry of Justice has changed the methodology for measuring reoffending to a three month cohort rather than a 12 month cohort this is reflected in reporting to the Executive with effect from Q3. The cohort will still be tracked over 12 months. Changing from 12 month cohorts to the 3 month cohorts results in a greater proportion of prolific offenders and hence higher reoffending rates, though both measures show similar trends over time at a national level. (Measure 18)

Data expected in Quarter 3 but not available

The figures are still not available for Quarter 3 for 'Requests for support for new clients, where the outcome was universal services/signposting'. The service is looking to report on this measure in Quarter 4 2017/18. The measure has been removed from the 2018-2020 Council Business Plan and replaced by 'Percentage of requests for support for new clients, aged 65 or over, where the outcome was long term support services.' This measure will more accurately reflect the extent of the preventative work in Adult Care and Community Wellbeing. (Measure 61).

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it

* Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

The Report presents performance against the outcomes and measures that are the Council Business Plan many of which relate to people with a protected characteristic including young people, older people and people with a disability. It is the responsibility of each service when it is considering making a change, stopping, or starting a new service to make sure equality considerations are taken into account and an equality impact analysis completed.

Joint Strategic Needs Analysis (JSNA and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

The Report presents performance against the outcomes and measures that are the Council Business Plan many of which relate directly to achievement of health and wellbeing objectives.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

The Report presents performance against the outcomes and measures that are the Council Business Plan some of which relate to crime and disorder issues.

3. Conclusion

This report presents an overview of performance for Quarter 3 against the Council Business Plan 2017/2018 and proposed changes to reporting to assist the Executive in monitoring that performance in future. Executive is invited to consider performance and consider and approve the proposed changes to reporting.

4. Legal Comments:

The Executive is responsible for ensuring that the Executive functions are discharged in accordance with the Budget and Policy Framework of which the Business Plan is a part. This report will assist the Executive in discharging this function.

The recommendation is lawful and within the remit of the Executive.

5. Resource Comments:

Acceptance of the recommendation in this report has no direct financial consequences for the Council.

6. Consultation

a) Has Local Member Been Consulted?

N/A

b) Has Executive Councillor Been Consulted?

N/A

c) Scrutiny Comments

This report will be considered by the Overview and Scrutiny Management Board at its meeting on 1 March 2018 and the comments of the Committee will be reported to the Executive.

d) Have Risks and Impact Analysis been carried out

No

e) Risks and Impact Analysis

Any changes to services, policies and projects are subject to an Equality Impact Analysis. The considerations of the contents and subsequent decisions are all taken with regard to existing policies.

7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Summary of the measures that did not achieve the target in Q3

8. Background Papers

No Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of this Report.

This report was written by Jasmine Sodhi, who can be contacted on 01522 552124 or jasmine.sodhi@lincolnshire.gov.uk .

Appendix A Summary of measures where the target was not achieved in Quarter 3

It is worth noting that all of the measures detailed below also did not achieve the target in Q1, and Q2. Some of these measures are outside the direct responsibility of the County Council

The following 3 commissioning strategies had mixed performance:-

[Protecting the public](#)

A summary of the 7 measures that did not achieve the target in Q3 for Protecting the Public Commissioning Strategy are detailed as follows. Some of these measures are outside the direct responsibility of the County Council:-

- 'Alcohol related antisocial behaviour incidents' although this continues to show a downward trend quarter on quarter, the target was not achieved. Incidents are down 7.5% in Q3 compared to the same time last year. The targeted reduction was from 2,853 in 2016/17, to a year-end target of 2,710 in 2017/18, a reduction of 5% on 2016/17's year-end outturn. If this trend continues, the targeted reduction in incidents is likely to be met by the end of the year. (Measure 5)
- 'Alcohol related violent crime incidents' Alcohol related violence increased by 37.2% in Q3 compared to the same quarter last year. This continues the upward trend noted in previous quarters. This indicator is influenced by changes in violent crime recording and the flagging of the presence of alcohol in police crime reports. The increase in violent crime recorded by the police in Lincolnshire is part of a national trend that has been noted by the Office for National Statistics. It is thought that the increase is at least partly driven by changed recording practices, and does not necessarily represent an increase in actual levels of violence. (Measure 6)
- 'Reported incidents of domestic abuse' to the police have increased for all districts, apart from Boston and South Holland, compared to the same quarter last year. Overall there has been a 4% increase in reported incidents in Quarter 3 2017-18 compared to Quarter 3 of 2016-17. These figures do not include incidents reported to other agencies and support services such as district councils or housing agencies.(Measure 7)
- 'Juvenile first time reoffenders' the most recent published first time entrants figure for Lincolnshire is 265 actual young people for the period of July 2016 to June 2017; this is higher than the target figure of 203, however, there are no expectations that this figure is likely to rise sharply in the near future. In June 2017 we launched a new diversionary project in Lincolnshire in conjunction with Lincolnshire Police. Although it was previously thought that the impact from this project would be seen in Quarter 3, it is likely that results will be seen in Q4's reporting figures. (Measure 15)
- 'Primary fires' we have seen an increase of 45 primary fires (5.5% - up from 815 cumulative at Q3 last year to 860 cumulative). The increase can be attributed to rises in dwelling fires (up from 292 cumulative to 312 cumulative – 7%) and vehicle fires (up from 198 to 222 – 12%). The increase seen at Q3 is less significant than that at Q2 and Q1, this has had the effect of bringing the measure closer to target. (Measure 19)
- 'Deliberate primary fires' we have seen an increase of 24 deliberate primary fires (14% - up from 175 at Q3 last year to 199). The increase can be attributed to rises in deliberate dwelling fires (up from 19 to 30 – 58%) and deliberate vehicle fires (up from 73 to 92 – 26%). On a more positive note, deliberate fires in prisons have

almost halved (down from 25 at Q3 last year to 13 this year). The increase in deliberate primary fires seen at Q3 is also less significant than at both Q2 and Q1, this has had the effect of bringing the measure closer to target. We have also reviewed our arson strategy to ensure that our activities continue to target these areas effectively. (Measure 21)

- 'Deliberate secondary fires' we have seen an increase of 30 deliberate secondary fires (15% up from 199 cumulative at Q3 last year to 229 cumulative). Deliberate fires involving refuse/refuse containers continue to account for the majority of these incidents (153 of the 229 this year – 67%) which have increased in number by 32 from 121 at Q3 last year. However, the increase seen at Q3 is less significant than that at both Q2 and Q1, which has had the effect of bringing the measure closer to target. We have also reviewed our arson strategy to ensure that our activities continue to target these areas effectively. (Measure 22)

Although it is not appropriate to compare the following measures with a target, performance has declined compared with previous quarter:-

- 'Anti-social behaviour incidents reported to the police' is 4.5% higher than the same quarter last year. The increase is largely driven by the increase in begging and vagrancy although the rate of this increase has slowed in this quarter. (Measure 107)
- 'Repeat referrals of domestic abuse to MARAC' the increase is just over 6 percentage points this quarter compared to the same period 2016-17. The continued drop in total number of referrals (new and repeat) to MARAC has continued this quarter and will continue to impact on percentage repeat referral rate. (Measure 9)
- 'People killed or seriously injured (KSI) in road traffic accidents' this figure is higher than the previous two quarters of 2017. Analysis of collision and casualty data does not indicate any clear commonality or patterns. The overall KSI's are mirrored across all user groups such as car drivers, motorcyclists, pedestrians etc. (Measure 11)

Protecting and sustaining the environment

A summary of the 2 measures that did not achieve the target in Q3 for Protecting and Sustaining the environment Commissioning Strategy are:-

- The Household Waste Recycling Centre (HWRC) the percentage of recycling at Household Waste Recycling Centres has decreased slightly in this quarter but is currently above the year-end forecast of 72.0%. It is anticipated that this figure will decrease in Quarter 4 due to the decrease in composting because of weather changes and growing conditions. We are seeing an overall reduction in the HWRCs recycling rate; a contributing factor will be the processing of some materials has been moved down the waste hierarchy from recycling to recovery. The Environment Agency have concerns around some materials being stored which has reduced the available recycling outlets in Lincolnshire. (Measure 76)
- 'Household waste recycled' the Kerbside collected waste recycling rate is 47.5% for quarters 1 to 3 of the 2017/18 reporting year. Figures are normally higher for the first 2 quarters of the year due to increased composting in the summer months. We are forecasting an overall decrease of household waste recycled; our year end forecast is 45.8% for the 2017/18 reporting year. This is compared with 46.7% in 2016/17.

This is due to an increase in the reported level of contamination (non-recyclables) in the mixed dry recyclable material collected at the kerbside. (Measure 78)

Wellbeing

A summary of the 2 measures that did not achieve the target in Q3 for Wellbeing Commissioning Strategy are:-

- 'Successful completion of alcohol treatment' Following the new contracts commencing in October 2016 it was anticipated that performance would dip; this has now started to recover with a rise from 34.9% to 35.7% in the latest verified report from Q2 2017/18. Local data shows further performance increases can be expected over the remaining quarters of 2017/18 however verified data is only available for Quarter 2. This verified data is calculated over the previous 12 months and still includes information from the transition period to the new contracts which was problematic and very disruptive to both service delivery and its users. (Measure 31)
- 'Chlamydia diagnosis' As reported in Q2, Service Credits are now in place from June 2017 due to continuing non achievement of the chlamydia target. Quality of postcode recording for patients is also being addressed within the service which may account for some tests not being included correctly in the totals. The data is published nationally 6 months in arrears. Relationships with contracted General Practitioner's and Pharmacies, as well as their sub-contracted outreach provider, to improve and promote the chlamydia testing offer are ongoing. Some success has been achieved using the mobile community clinic. Online testing remains very popular and has the highest positivity rate indicating this electronic media service is well targeted and Lincolnshire Integrated Sexual Health services (LISH) are being encouraged to increase their online offer. Early indications are that performance is improving and is likely to exceed the target in Quarter 4. (Measure 34)

How we effectively target our resources

'Capital receipts' Although it is not appropriate to set an annual target for this measure, the £20m disposals target is a three year plan scheduled to end 2018/19. As at Q3 2017/18 (year 2 of 3) the service has reported £2.7 in capital receipts. A further £1.5m of receipts is currently awaiting final legal documentation and so cannot yet be included within the actual figure. The year-end forecast is currently at £6.2m for the end of 2017/18 (year 2 of 3). The forecasted figure is inclusive of receipts already awarded; this figure is subject to change, dependent on any capital receipts generated earlier or later than anticipated. Capital receipts for 2016/17 were £3.5m. If the forecast of £6.2m is achieved in 2017/2018 this would require £10.3m capital receipts to be achieved in 2018/2019 to achieve the 3 year target of £20m.

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