

Agenda Item No: 6

Report To: Audit Committee

Date of Meeting: 1st February 2022

Report Title: Instruction and administrative processes of Legal Services: Internal Audit Report

Report Author & Job Title: Alison Blake: Deputy Head of Audit Partnership



Summary:

On 7 September Mid Kent Audit published the final report on work examining controls which govern the instruction and administrative processes of the Council's Legal Service.

While noting that the Service faces significant pressures resulting from increased demand and several long-standing senior lawyer vacancies, further magnified by the Pandemic, the report gave a "weak" assurance rating, an adverse conclusion holding that the majority of controls do not work consistently at keeping risks to an acceptable level.

The Legal Service has agreed to a series of remedial actions to address the findings. In line with settled practice, this report brings the findings to Members' attention to allow an understanding of the issues raised and to support and track improvements.

Key Decision: No

Significantly Affected Wards: N/A

Recommendations: **The Committee is recommended to:**

- I. **Note** the findings raised in Mid Kent Audit's report on the instruction and administrative processes of the Council's Legal Service, and
- II. **Consider** whether receipt of a future report from the Solicitor to the Council and Monitoring Officer on progress towards completing agreed remedial actions is needed.

Policy Overview: N/A

Financial Implications: No new implications.

Legal Implications	No specific implications. The Audit did not test the quality of the legal advice being provided, documents negotiated, or the court work carried out, and its conclusion did not extend to or seek to make judgements on those matters.
Equalities Impact Assessment	Not required.
Other Material Implications:	N/A
Exempt from Publication:	NO
Background Papers:	The Final audit report - attached.
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Report Title: Legal Services Internal Audit Report

Introduction and Background

Planning and Reporting the Audit Engagement

1. Each year, working in conformance with Public Sector Internal Audit Standards, Mid Kent Audit draws up a risk-based audit plan for approval by Members. Before 2019/20, the Council's legal service had never been subject to internal audit review. Although the legal service did appear on the 2019/20 audit plan we agreed to defer the engagement in discussion with officers to allow a review to take place.
2. The Council's legal service next appeared on the 2020/21 Audit Plan agreed by this Committee in [March 2020](#). In operational planning discussions with officers we agreed to schedule the work late in the year. Also, recognising that we lack expertise to comment on the quality of legal advice provided, we agreed to focus our work only on the legal service's instruction and administrative processes.
3. We began the work as scheduled on 31 March 2021 working to a brief agreed with the Service. We finished fieldwork on 11 June 2021, slightly later than planned owing to a need for fully looking into the emerging findings. We published a draft report to the service on 23 June and, after much discussion to decide the most effective remedial actions, published the final report on 7 September.
4. This timeline meant the final report appeared some time after the Deputy Head of Audit reported his annual opinion to Members on 15 June. However, the work was substantially complete at that stage and its conclusions featured fully within the delivered opinion.

Audit Engagement Findings

5. We include the full published report as an appendix. In summary, while recognising the significant and sustained resource pressures on the service, due to several long-standing senior lawyer vacancies, and further magnified by the Pandemic, our work found that eight of ten examined controls were not working effectively. Based on those findings we identified two risks operating beyond the Council's agreed risk appetite:
 - [the risk that] the Legal Service is not sufficiently integrated by Officers into the Council's processes, leading to Legal Services having no or poor awareness of issues/projects where legal advice is or may be required or may result in poor advice given.
 - [the risk that] Legal advice/support to clients is hindered by inadequate instruction and administrative processes.

6. Driving these conclusions were eleven separately listed audit findings. Two stand out as 'high priority', labelling them as having the deepest impact in reducing control effectiveness:
- Only two of ten cases sampled used the standard instruction forms intended for use by instructing departments/officers. This meant the legal service could have missed prompt receipt of important information relevant to the advice needed, such as urgency.
 - None of the ten cases we sampled had been closed, although all had concluded. As well as providing a misleading impression of the number of open cases, not closing a case promptly leaves a risk of further documents being erroneously added to the case.
7. Following our standard practice in audit, we discussed and agreed remedial actions for each finding with the service. These actions fall due for completion between January and June 2022. We will follow up progress in line with our usual approach and, first, report to Management Team.
8. We in audit thank officers from the Legal Service for their help throughout the engagement, recognising that the Audit took place at a time of numerous staff vacancies in the Service, and also when staff were working at home in a wide variety of situations, instead of together as a team in the usual way. In particular the Service's management's positive engagement with our findings has resulted in a broad set of agreed actions which we believe will lead to real improvements.

Legal Service Response (this section completed by the Solicitor to the Council and Monitoring Officer)

9. I am grateful to the audit team for their work with Legal Services to identify a range of recommended improvements to our instruction and administrative processes. Those improvements will assist the Legal Service to provide more proactive and timely legal advice and support to the Council, and I regard their implementation as important to the development of the Service. Therefore, I have taken personal responsibility for their implementation, and I have appointed one of our senior lawyers to act as a legal practice manager and work closely with me to ensure that the recommended actions are undertaken within realistic timelines. Indeed a number of the actions have already been completed, and most of the remaining actions are due for completion by April 2022.

Proposal

10. We recommend the Committee note the attached final audit report. We further recommend the Committee consider amending its work programme to schedule a future update (or updates) on progress towards fulfilling agreed actions.

Implications and Risk Assessment

11. The audit report sets out the possible risks arising from the findings, but these are accompanied by short-term remedial actions which have been agreed by the Service's management for implementation.

Next Steps in Process

12. Mid Kent Audit will continue to monitor progress and this will form part of interim and annual reporting to Members as part of overall summaries.

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Instruction and administrative processes of Legal Services

(Financial year 2020/2021)

FINAL AUDIT REPORT SEPTEMBER 2021

FINAL Assurance Rating:

Weak

Audit Code	A21-AR08	Service	ABC Legal & Democracy
Lead Auditor	Andy Billingham	Sponsor	Terry Mortimer
Audit Reviewer	Ali Blake	Director	Tracey Kerly



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Summary Report

Our opinion based on our audit work is that the internal controls in place over the *instruction and administrative processes of Legal Services* are:

WEAK¹

We note that the Service continues to face significant pressures resulting from increased demand and a lack of resources (due to several long-standing senior lawyer vacancies in the service). These pressures have been further magnified over the last year during the Pandemic, and this has impacted on both the design and operation of their internal controls, specifically, those designed to effectively manage the flow and administration of legal services requests. The majority of controls that we tested were either ineffective or partially effective and so are not helping to effectively manage the Service's risks.

The scope of our work has been to look at processes and case management controls, this is in effect, the first stage in the legal service process. We have not tested the quality of the legal advice being provided, documents negotiated, or the court work carried out, therefore our conclusion does not extend to or seek to make judgements on those matters.

Our testing confirmed that some of the corporate processes to request, instruct and engage with Legal Services are not adequately integrated into Council processes. These inconsistencies extend the full breadth of the processes including legal considerations in Council decision making and major projects. The Service needs to work with its client services/officers (including the Council corporately) to secure their cooperation to make improvements to ensure there is a consistent instruction process in place. This process should then be used by clients and administered by Legal Services in a clear, effective, and suitably prioritised way. Work needs to be undertaken with service users to increase awareness, engagement and to make sure that instruction processes can be easily accessed and monitored.

Internally, administrative processes of Legal Services are hampered by a lack of resources and some non-compliance with agreed administrative procedures and approaches. In part, this is due to some officers/locums not being signposted and trained to follow up to date procedures, or, simply not being aware that procedures exist in the first place. Some risks are increased further as the service does not formally document a risk-based prioritisation or allocation process nor formally document a case review process for open files.

¹ We provide the definitions of our assurance ratings at **appendix II**

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Next Steps

In this report we describe the **11** priority findings where actions will require future follow-up. We are pleased to report that all of the findings have been agreed, and that the service has set out a series of actions and set target dates for completion. As such, we will follow up these actions as they fall due in line with our usual approach.

We have prioritised these as below:

Critical (Priority 1)	0
High (Priority 2)	2
Medium (Priority 3)	5
Low (Priority 4)	4
Advisory	0

We provide the definition of our priority ratings at appendix II.

Independence

We are required by Public Sector Internal Audit Standard 1100 to act at all times with independence and objectivity. Where there are any threats, in fact or appearance, to that independence we must disclose the nature of the threat and set out how it has been managed in completing our work.

We have no matters to report in connection with this audit project.

Acknowledgements

We would like to express our thanks to all those officers who helped completion of this work, in particular:

- Terry Mortimer, Solicitor to the Council & Monitoring Officer
- Jeremy Baker, Principal Solicitor
- Rhonda Mickelborough, Legal Support Officer
- Tina Young, Legal Assistant
- Rosie Reid, Member Services & Ombudsman Complaints Officer

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Distribution

Audit team and contact details	Report distribution list
Deputy Head of Audit Partnership Russell Heppleston (russell.heppleston@midkent.gov.uk)	Draft and Final Report Terry Mortimer, Solicitor to the Council and Monitoring Officer Jeremy Baker, Principal Solicitor
Audit Manager Ali Blake (alison.blake@midkent.gov.uk)	Final Report Ben Lockwood, Deputy Chief Executive (s151) Tracey Kerly, Chief Executive
Senior Auditor Andy Billingham (andy.billingham@midkent.gov.uk)	

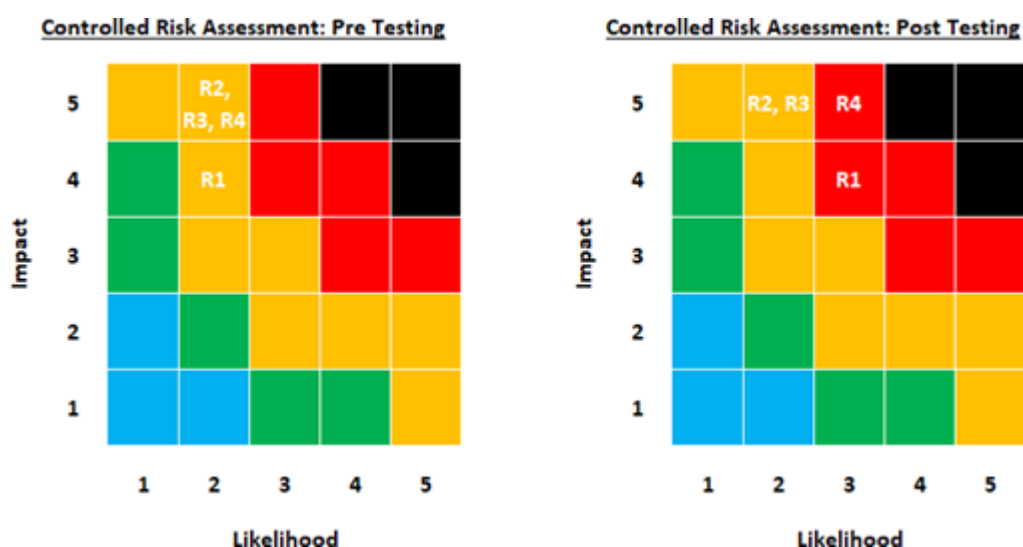
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Detailed Findings

Our work considers the objectives, risks and controls agreed with the service as in the review's scope. We assessed each risk during planning as either **Critical**, **High**, **Medium**, **Low** or **Minimal** based on the controls reported and the service's understanding of how well the controls work. We base our assessments on controlled risk and score using the Council's Risk Framework.

This detailed report sets out our results and findings from testing each agreed objective, risk and control. We also describe the effect of our findings on the assessed risk.

The post-testing risk assessment takes into consideration the adequacy and effectiveness of the controls. We have increased the exposures for **2 (R1 and R4)** risks following our testing of the controls. Where these risks have increased it has taken them above the Council's risk appetite and tolerance, because the Council's Risk Framework sets the tolerance for "Compliance", which includes legal risks, as VERY LOW.



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The table below summarises our assessment of **control effectiveness** following our testing and how each control links to the risks:

Control	Post-Testing Control Assessment			
	Risk 1	Risk 2	Risk 3	Risk 4
Awareness of instruction process	Ineffective			
Legal representation at meetings	Effective		Effective	
Draft Cabinet reports	Partly Effective		Partly Effective	
Project Initiation Documents (PID)	Partly Effective		Partly Effective	
Instruction of new cases	Ineffective			Ineffective
Allocation of new cases	Partly Effective			Partly Effective
Review of ongoing cases	Ineffective			Ineffective
Case records	Partly Effective			Partly Effective
Standing instructions		Partly Effective		
Ombudsman complaints		Effective		

Of the 10 controls tested, 2 were working as intended. The remainder of the report sets out in greater detail the evidence to support our conclusions along with our findings and action plan, including our recommendations.

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Objective 1: To provide timely, relevant and comprehensible legal advice to the Council, its Members and Officers

RISK 1:

The Legal Service is not sufficiently integrated by Officers/Members into the processes of the Council, leading to Legal Services having no or poor awareness of issues/projects where legal advice is or may be required or may result in poor advice given.

Control 1: Awareness of instruction process

Besides some standing instructions, discussed later in the report, the Service hasn't provided any recent training or awareness sessions to internal service users regarding how to interact with Legal Services.

The Council's intranet has recently been replaced with a Smarthub. Although officers can still access information on the intranet, the information relating to Legal Services on the intranet is out of date and information on Smarthub has not been fully updated. To avoid confusion and provide better clarification, officers should remove out of date information and transfer all remaining relevant information to the Smarthub. **(see R01)**

Control 2: Legal representation at meetings

We examined and reviewed information from 3 meetings over the last 6 months to determine the representation of Legal Services and their contributions:

1. Management Team.
2. Statutory Officer Meetings.
3. Programme Management Board.

We found officers didn't keep minutes for all the meetings, however we confirmed a Legal representative attended 7/12 Management Teams, 9/9 Statutory Officer meetings and 1/3 Programme Management Board meetings. It appears that every effort is made to have legal support and representation where it is required but note that the demands on existing resources and current limitations on those resources, mean that consistent representation could be harder to maintain. This will likely be compounded if the service does increase engagement, and therefore this will need to be carefully balanced with priorities / risks going forward. i.e. agreeing to have representation at certain meetings and not others.

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Control 3: Draft Cabinet reports

The Council requires officers to consult with Legal Services on draft Cabinet reports prior to Management Team circulation. The requirement is controlled using a prompt within the Cabinet report template and Cabinet report writing guidance to authors. We tested a random sample of 5 Cabinet reports for 20/21 and found the following:

- 5/5 completed the legal implications section.
- 5/5 were presented to Management Team where there was a Legal Services representative present.

However, based on the details and guidance of the legal implications section, it is unclear what information was sought, the legal advice given, and by whom. During our interviews, Legal Service officers also stated that they too were often unclear what information was obtained when the draft report was presented to Management Team. **(See R02)**

Control 4: Project Initiation Documents (PID)

We examined the PID template and there is no prompt to detail discussions held with Legal Services despite prompts for Finance, Procurement and Planning. PID's are presented at the Programme Management Board for consideration and this acts as a compensating control to ensure Legal Services are kept up to date about new projects and any potential legal implications. However, we could only verify a Legal representative attended 1/3 of the meetings we reviewed. Similarly, during our interviews with Legal Services officers they expressed concerns that they were unaware of all upcoming projects. **(See R03)**

Control 5: Instruction of new cases

The Council's Smarthub includes 2 forms to instruct Legal Services, a "request for legal advice" and "instruction form for s106 agreements". The first, "request for legal advice" includes an instruction to check the intranet first for general advice. As noted above, the information on the intranet is out of date, and includes links which are no longer active. The form currently requires the instruction to be sent straight to the Principal Solicitor, which contradicts the advice on the Smarthub, which states it should be sent to Legal Support. **(See R07)**

We found there are no issues with the second form, 'instruction form for s106 agreements'.

There were no tailored instruction forms for other services who regularly use Legal Services such as Housing (Property). **(See R01)**, however the general form is

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available to them.

We tested a random sample of 10 instructions in 2020/21 to establish if they were received using the instruction template in accordance with the agreed instruction process. We found that out of the 10 tested, only 2 were received using the correct instruction forms (2/10 cases). **(See R01)**

We tested all 10 cases further to determine if they were processed, once instructed, in accordance with agreed procedures and found:

- We found 1 case where client instructions weren't received prior to the arrival of external solicitor's correspondence. **(See R01)**
- 10/10 cases were allocated a unique reference number
- 10/10 allocated a fee earner
- Acknowledgements were sent for 6/10 cases. These acknowledgements did not follow a consistent process despite a standard acknowledgement template being available to all staff. **(See R08)**
- 9/10 files were set up correctly by Legal Support. The remaining case was set up and completed by a Locum. **(See R09)**

Control 6: Review/risk assessment/allocation of new cases

During our interviews with Officers, there was a consistent view that a risk assessment process exists for new Planning instructions to determine urgency and how the matter should progress. However, the risk assessment methodology and its application are not documented, and we were unable to evidence how the process operates in practice. There is no risk assessment or prioritisation process for Property cases, due to resource constraints and vacancies within the service. **(See R10)**

We also found that officers within the Property team receive their cases directly, as such, it is not possible to determine their current workload, urgency of the case or whether there is sufficient resilience during periods of officer leave. **(See R11)**

Control 7: Review of ongoing cases

There are currently 1455 open cases on the Iken system, the oldest date back to April 2000. We tested a sample of 10 open cases to establish whether they should be closed. Our testing comprised detailed walkthrough and review of each case and discussion with officers. We found:

- All 10 cases should have been closed.
- The oldest case last worked on dated back to February 2004.

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- 3 cases were initially closed but re-opened so additional time could be charged to them. These cases were subsequently not re-closed. (See R04 and R09)

Some team leaders review open cases in 1-2-1's with officers. However, there is no process to periodically look at all open cases to ensure they have adequately progressed or have been closed. While a case remains open it can be edited. This may create a risk of documentation changing after the case is concluded.

Control 8: Case records

The Service uses Iken as their legal case management system. Access to the system is controlled through usernames and passwords. We found that officers in post since Iken was introduced haven't had their password controls enabled, this includes one superuser. Officers who do use passwords do not regularly update them. While Iken can only be accessed by logging onto the Council's network, the Council's IT Security Policies should be reviewed and any necessary further IT access controls put in place to ensure the protection and safeguarding of legally sensitive information and to ensure clear accountabilities over case data. (See R05)

We tested a random sample of 5 leavers, all had their access to Iken disabled. However, officers confirmed they had reviewed this during the audit and disabled missed accounts. No routine process exists to ensure the timely removal of leavers. (See R06)

Conclusion

Total controls tested	Controls operating effectively	Controls partially effective	Controls not operating effectively
8	1	4	3

Our conclusion, based on the results of testing, are that improvements should be made to the legal instruction processes, including raising awareness, user engagement and support. Open cases need to be reviewed, to ensure historic cases have adequately progressed, and PID/Cabinet report templates updated, to prompt early Legal discussion about potential issues. Our assessment of the controlled risk has increased in likelihood based on the number of controls not operating as intended to manage the risk to acceptable levels (i.e. VERY LOW, in line with the Council's Risk Framework).

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Objective 2: To conduct, on behalf of the Council, actual or threatened legal proceedings, and Ombudsman complaints that raise legal issues

RISK 2:

Legal Services is not notified promptly of actual or threatened legal proceedings, and Ombudsman complaints that raise legal issues.

Control 1: Standing instructions

Standing instructions are detailed on the Council's Smarthub and include generic instructions on how to instruct new work and legal matters as well as specific instructions for the s106 process. There are no further specific instructions for individual services who frequently instruct Legal Services for example, the process, what form to complete, and the information required. (See R01)

Control 2: Ombudsman complaints

The administration of Ombudsman complaints is overseen by experienced officers who report progress annually to the Standards Committee. There were 4 ombudsman complaints with legal issues received since 1 April 2020. We tested all of these and found 3/4 were promptly passed to Legal Services. We haven't raised a finding about the 1 delayed complaint as, upon detailed review, we are satisfied that this was an isolated incident and does not represent a systemic issue or risk.

Conclusion

Total controls tested	Controls operating effectively	Controls partially effective	Controls not operating effectively
2	1	1	-

Our conclusion based on our testing is that the process for administering and processing Ombudsman complaints are generally effective. Improvements could be made to tailor standing instructions to individual services who frequently instruct Legal Services, this would provide better guidance and ensure consistency in the application of the controls.

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RISK 3:

Legal Services not being given comprehensive instructions in good time by Officers

The controls in place to mitigate this risk are the same as some of the controls previously mentioned under Risk 1. These controls are listed below but further information is included above.

- Control 1: Legal representation at meetings
- Control 2: Draft Cabinet reports
- Control 3: Project Initiation Documents

Conclusion

Total controls tested	Controls operating effectively	Controls partially effective	Controls not operating effectively
3	1	2	-

The results of our testing conclude that PID and Cabinet report templates should be amended to ensure prompt discussion between report authors and Legal officers of Legal issues. **(See R02 and R03)** The controls reported as partially effective do increase the likelihood that Legal Officers aren't given comprehensive instructions in good time, however, given the results of our testing we don't feel that this has significantly increased the level of overall risk exposure.

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RISK 4:

Legal advice/support to clients is hindered by inadequate instruction and administrative processes

This risk focusses on the procedures that are in place to facilitate and enable the goal of providing legal advice/support to clients. The controls in place to mitigate this risk are the same as some of the controls previously mentioned under Risk 1. These controls are listed below but further information is included above.

- Control 1: Instruction of new cases
- Control 2: Review/risk assessment/allocation of new cases
- Control 3: Review of ongoing cases
- Control 4: Case records

Conclusion

Total controls tested	Controls operating effectively	Controls partially effective	Controls not operating effectively
4	0	2	2

Our conclusion, based on the results of testing, is that the controls in place to effectively administer and manage the workload of the service need to be improved. This includes the need to strengthen the controls over the review and management of open cases, and to improve the controls over the prioritisation and allocation of work. As none of the controls tested were operating effectively, our risk assessment has been revised to reflect the increased exposure that the service faces. This new assessment is above the tolerance of compliance/legal risk that the Council sets within its risk framework.

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Recommendations and Action Plan

01 - Awareness of instruction process	High (Priority 2)
<p>Finding Description: Legal Services haven't provided recent training/awareness sessions to users regarding how to interact with Legal Services.</p> <p>There are generic standing instructions in place however these could be further tailored to individual services such as Property to provide additional guidance. Our testing found that 2 out of a sample of 10 cases used the standard instruction forms. Our testing also found 1 case of an instruction coming from an external solicitor as the internal instructing department had failed to complete an instruction.</p> <p>The information available on the intranet is out of date. Information available on the intranet hasn't been transferred to the Smarthub.</p> <p>Cause: Lack of resources within Legal Services</p> <p>Effect: Service users aren't fully aware of the process they should follow when interacting with Legal Services.</p> <p>The instruction process is inconsistent. Important information such as urgency of the work isn't obtained at the first point of contact to help inform the risk assessment / allocation process.</p> <p>Recommendation:</p> <ol style="list-style-type: none">1. Provide regular updates to service users on how to engage with and instruct Legal Services2. Increase standing instructions for individual service areas3. Update and transfer available guidance on the intranet to the Smarthub	
Management Response & Actions	
<p>Response Type: Agreed</p> <p>Recommendation 01/Action 01 – Information about Legal Services, its staff and their legal expertise, and how to instruct Legal Services (including existing instruction forms), is published on the SmartHub and is up to date. The SmartHub is the corporate method of communication to staff and will contain all further tailored instruction forms that are made available. When new Legal staff have been recruited, we will brief Corporate Management Team in general on how and when to instruct Legal Services, including signposting the relevant SmartHub pages.</p>	

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Recommendation 01/Action 02 – (i) We intend to make available tailored instruction forms to other client services that regularly use Legal Services. (ii) We intend to brief each relevant client service on how and when to use the tailored instruction forms.

N.B. (a) There will be cases where standard instruction forms may not be completed, for example in cases of urgency.

N.B. (b) The absence of a standard instruction form (as opposed to informal and/or undocumented instructions) from the client service has not of itself prevented or delayed the carrying out of any necessary legal work. However, the use of standard instruction forms will assist Legal Services in carrying out its work efficiently.

Recommendation 01/Action 03 – This has been implemented.

<p>Responsible officer: Terry Mortimer</p>	<p>Implementation date:</p> <p>Action 01: 01 January 2022 Action 02(i): 30 April 2022 Action 02(ii): 31 May 2022 Action 03: Implemented & Closed</p>
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04 - Review of open cases

High (Priority 2)

Finding Description: There isn't a process in place to periodically review all open cases to ensure cases have adequately progressed or are closed following completion.

Reports from the system show that there are currently 1455 open legal cases. Our testing of a random sample of 10 open cases found they all should have been closed.

Cause: Lack of officer resources both for operation and oversight of controls

Effect: Officers are unaware if all open cases have sufficiently progressed or the overall number of genuinely open cases.

Open cases can still be edited following completion.

Recommendation:

1. Introduce a regular process to check that open cases have been adequately progressed
2. Review historic open cases to ensure they've been adequately progressed
3. Embed a process for closing cases

Management Response & Actions

Response Type: Agreed

Recommendation 04/Action 01 – A number of processes already exist to review the progress of open cases, for example fee-earners can request file lists of cases not progressed for x days; team leaders have regular 1 to 1 meetings with fee-earners in order to monitor case progression; meetings take place between Legal and client officers to review progress. It is however accepted that:

- (i) there should be more regular internal reviews of case progression, and to that end, a procedure will be created by Legal Management Team, and included in the Procedure Manual referred to in the response to **recommendation 09**;
- (ii) more regular timetabled case monitoring with some client officers should be explored and if necessary incorporated within an agreed protocol with those client services.

Recommendation 04/Action 02 - Over 250 historic files were closed during a review of the Legal Service's open cases during May and June 2021. Many of those files are currently awaiting post-closure processes, such as scanning and indexing of scanned documents for long-term record purposes. It is accepted that there should be a review of historic open cases, and the review of case progression referred to above will seek to identify the historic open cases in order that they can be subject to the file closure

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process.

Recommendation 04/Action 03 - See response to *recommendation 09*

<p>Responsible officer: Terry Mortimer</p>	<p>Implementation date:</p> <p>Action 01 (i): 01 April 2022 Action 01 (ii): 31 May 2022 Action 02: 01 April 2022 Action 03: 01 April 2022</p>
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02 - Cabinet reports	Medium (Priority 3)
<p>Finding Description: The Cabinet report template doesn't detail enough information to confirm whether legal issues have been adequately considered and discussed with Legal Services prior to presentation at Management Team.</p> <p>While not specifically tested we also note that other Member reports also don't include sufficient detail around legal implications.</p> <p>Cause: The design of the Cabinet report template doesn't prompt officers to discuss legal issues with Legal Services or detail the discussion held and with whom.</p> <p>Effect: When the draft Cabinet report is presented at Management Team the Legal representative is unclear as to whether legal issues have been fully considered.</p> <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Re-design the Cabinet report template to include the following information. <ul style="list-style-type: none"> • Confirmation legal implications have been discussed with Legal Services • The name of the officer who provided the advice • Details of the advice given 2. Consider re-designing all report templates to incorporate: <ul style="list-style-type: none"> • Confirmation legal implications have been discussed with Legal Services • The name of the officer who provided the advice • Details of the advice given 	
Management Response & Actions	

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Response Type: Agreed

Recommendation 02/Action 01 – This is accepted and will need to be implemented corporately, and will require the introduction across the Council of a new process for the identification and advice of legal implications for all Cabinet reports, involving the instruction of a Legal officer in time to provide the necessary input to draft reports. To that end, we will work with Member Services and Management Team to update the Cabinet report template and report-writing guidance to improve the “Legal implications” section.

***N.B.** We consider that this is a high priority recommendation because it is directly related to the control of Risk 1 (i.e. that the Legal Service is not sufficiently integrated etc.) which is identified in the “Detailed Findings” in this report as being above the council’s risk tolerance.*

Recommendation 02/Action 02 – Although this recommendation is not applicable to all reports for various reasons, it is accepted that it should be considered for reports to internal bodies whose decisions will be implemented without a Cabinet/Full Council report being written, such as ERIB and TEB. To that end, we will work with Member Services and Management Team to update relevant report templates and report-writing guidance to provide/improve the “Legal implications” section and introduce the procedure referred to above.

Responsible officer:
Terry Mortimer

Implementation date:
Action 01: 01 January 2022
Action 02: 01 January 2022

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03 - Project Initiation Document (PID) Template		Medium (Priority 3)
<p>Finding Description: The PID template includes prompts for discussions with Finance, Procurement and Planning but there is no prompt for discussions with Legal.</p> <p>Legal Services officers stated they were unaware of all upcoming projects.</p> <p>Cause: Inadequate design of the PID template</p> <p>Effect: Legal issues might not be fully considered or discussed with Legal Services.</p> <p>Recommendation: Include a "legal discussion" prompt in the PID to confirm the following:</p> <ul style="list-style-type: none"> • Confirmation legal implications have been discussed with Legal Services. • The name of the officer who provided the advice. • Details of the advice given. 		
Management Response & Action		
<p>Response Type: Agreed</p> <p>Response Comments: This is accepted and will need to be implemented corporately, and will require the introduction across the Council of a new process for the identification of potential legal implications/need for legal resources for all PIDs, involving the instruction of a Legal officer in time to provide the necessary input to draft PIDs.</p> <p>To that end, we have commenced work with the Corporate Policy team to update the PID template, flowchart, and guidance to include a "Legal implications" section.</p> <p><i>N.B. We consider that this is a high priority recommendation because it is directly related to the control of Risk 1 (i.e. that the Legal Service is not sufficiently integrated etc.) which is identified in the "Detailed Findings" in this report as being above the council's risk tolerance.</i></p>		
Agreed Action		
<p>Responsible officer: Terry Mortimer</p>		<p>Implementation date: 01 December 2021</p>

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09 - Procedures

Medium (Priority 3)

Finding Description: There is evidence that Locums may not know where to find up to date file opening and closing procedures. We were informed during the wash-up of the audit that procedures are available in Iken, however these were not supplied, and officers did not direct us to them during our interviews or testing.

Our testing found one case out of ten where a Locum had opened and closed their own Iken file. This should have been done by Legal Support.

Cause: Lack of resources & internal training / support

Effect: The service employs Locums who work from home and rarely visit the office. The service is also looking to recruit new starters. If officers don't know where to find and don't follow up to date procedures, they are less likely to follow a consistent process.

Recommendation:

1. Ensure all procedures are up to date including:
 - Responding to instructions (acknowledgements).
 - Agreeing timescales for progressing the instruction
 - Setting up a file
 - Closing a file
2. Ensure officers are aware of how to access all procedures

Management Response & Actions

Response Type: Agreed

Recommendation 09/Action 01 There are up-to-date procedures already in place in Iken to deal with the above matters (Acknowledgments; File Opening; File Closing). These will be collated into a short Procedure Manual for all staff and Locums to make them aware of where they are located within Iken and when to use them.

However, acknowledgments do not and will not include a likely timescale for completion of the work instructed, as this will be discussed separately with the client officers when the matter/papers are reviewed with the client officers. Agreed timescales will be documented within the file when agreed with the client. Instead, acknowledgments will be amended to include a likely timescale for the fee-earner to make contact with the client officer(s) to progress the instruction, supported by an internal process to ensure that realistic response times are set and normally adhered to, such process to be in the Procedure Manual.

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Recommendation 09/Action 02 - The Procedure Manual will be issued to all staff and Locums, and new starters.

The Procedure Manual will also include the procedures for:

- internal reviews of case progression, referred to in the response to **recommendation 04**;
- risk assessment of new cases, referred to in the Response to **recommendation 10**;
- staff leaving, referred to in the response to **recommendation 06**; and
- acknowledgments, referred to in the response to **recommendation 08**.

Responsible officer:
Terry Mortimer

Implementation date:
Action 01: 01 April 2022
Action 02: 01 April 2022

10 - Risk assessments

Medium (Priority 3)

Finding Description: There is no documented risk assessment methodology for prioritising cases prior to allocation.

Officers dealing with Planning cases verbally confirmed they conduct a risk assessment prior to allocation, however there isn't a similar process for Property cases.

Cause: Lack of resources and turnover of supervising staff

Effect: Urgent or important cases may be missed or delayed. Officers may be issued with work without the capacity to complete it.

Recommendation: Introduce a formal risk assessment framework and process for prioritising new legal cases received.

Management Response

Response Type: Agreed

Response Comments: As the report acknowledges risk assessments are carried out by team leaders prior to allocation but it is accepted that this process should be documented. To that end, a framework and process will be created by Legal Management Team and included in the Procedure Manual referred to in the response to **recommendation 09**.

Responsible officer:
Terry Mortimer

Implementation date:
01 April 2022

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11 - Allocations (property)	Medium (Priority 3)
<p>Finding Description: Our testing established there is no allocations process for cases relating to Property.</p> <p>Cause: Lack of resources and turnover of supervising staff.</p> <p>Effect: Urgent or important cases may be missed or delayed. Officers may be issued with work without the capacity to complete it.</p> <p>Recommendation: Introduce an allocations process for Property cases</p>	
Management Response & Action	
<p>Response Type: Agreed</p> <p>Response Comments: It is possible to determine the current workloads of the Property team when allocating work during the vacancy in the team leader's post. Iken produces current case lists, and in addition a Principal Solicitor and/or the Solicitor to the Council personally allocates significant new cases in the Property team. The documented risk assessment process referred to in the response to recommendation 10 will apply equally to Property cases.</p>	
Agreed Action	
<p>Responsible officer: Terry Mortimer</p>	<p>Implementation date: 01 April 2022</p>

05 - IKEN Access Controls	Low (Priority 4)
<p>Finding Description: Some officers don't have a password to access Iken and only use their username. Existing passwords for officers may not fully comply with the Council's IT security policies, but this needs to be checked in more detail by Legal Services.</p> <p>Cause: Officers who were employed by the authority when Iken was introduced weren't asked to set up passwords.</p> <p>Effect: Weak Iken access controls mean officers can potentially access Iken inappropriately through superuser access.</p> <p>Recommendation: Legal services should explore whether any further access security is required to comply with the council's IT policy</p>	

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Management Response

Response Type: Agreed

Response Comments: It is not correct to assume non-super-users can access the system as super-users. All access to Iken by all users is via their personal IT log in. Further, every action within Iken is auditable, thus each access is logged and all activity recorded.

The Council's IT security policy allows some relaxation of password control for systems already protected by the main network password and which are only available once logged on using the main network password.

We will:

- (i) liaise with IT to ensure that access to Iken complies with the Council's IT security policy, and
- (ii) if improved access arrangements are required, liaise with Iken to implement appropriate and technically feasible solutions.

Responsible officer:

Terry Mortimer

Implementation date:

(i): 01 December 2021

(ii): 01 March 2022

06 - Leavers

Low (Priority 4)

Finding Description: Officers confirmed they reviewed Iken user accounts during the audit and disabled accounts of officers who had left and had previously been missed.

There isn't a process in place to ensure officer accounts are timeously disabled when they leave. Although some protection is in place as access to Iken can only be gained by accessing the ABC network.

Cause: Officer oversight

Effect: Access controls are weakened and officers who have left the authority may still be able to access their accounts

Recommendation: Introduce a process to promptly disable leaver Iken accounts

Management Response & Actions

Response Type: Agreed

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Response Comments: When a member of staff leaves, it is standard practice for IT to disable that member of staff's access to all systems. This would in turn prevent them from accessing Iken. However, legal services could disable the staff member's access to Iken at source, thereby being an additional safeguard against unauthorised access. To that end, a procedure for staff leaving will be created by Legal Management Team and included in the Procedure Manual referred to in the response to **recommendation 09**.

Responsible officer:

Terry Mortimer

Implementation date:

01 April 2022

07 - Request for legal advice form

Low (Priority 4)

Finding Description: The form states it should be sent directly to the Principal Solicitor which contradicts the standing instruction which states the form should be sent to Legal Support.

The form refers officers to the intranet for further guidance. However, the information on the intranet is currently out of date and officers should be referred to the Smarthub instead. The link to the intranet also doesn't work.

Cause: Officer oversight.

Effect: Without clear guidance and procedures legal requests may be incomplete, be missed, or bypass the process altogether. Conflicting information leads to unnecessary confusion.

Recommendation: Update the request for legal advice form

Management Response & Action

Response Type: Agreed

Response Comments: This is accepted and has been implemented. The intranet is no longer in use and the obsolete link on one of the Smarthub forms to it has been removed. The inconsistent dispatch instructions on the form have been changed.

Responsible officer:

Terry Mortimer

Implementation date:

Implemented & Closed

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08 - Acknowledgements	Low (Priority 4)
<p>Finding Description: Legal Services do not send a standard acknowledgement upon the receipt of instructions.</p> <p>Some officers are unaware of the acknowledgement template in Iken. Our testing of 10 cases found the following:</p> <ul style="list-style-type: none"> • An acknowledgement was sent for 6/10 cases. • The information provided in the acknowledgements was inconsistent. <p>Cause: A standard acknowledgement process hasn't been embedded.</p> <p>Effect: Instructing officers aren't consistently informed of the following:</p> <ul style="list-style-type: none"> • The assigned fee earner. • Fee earner contact details. • Alternative contact details should the fee earner be unavailable. • Likely time scale for progressing the instruction. <p>Recommendation: Draft, agree and embed a standard acknowledgement process to ensure instructing officers are provided with consistent information.</p>	
Management Response & Action	
<p>Response Type: Agreed</p> <p>Response Comments: Legal Services have a standard acknowledgement in use, we accept that this needs to be used more consistently. However, this does not and will not include a likely timescale as this will be discussed separately with the client when the matter/papers are reviewed with the client.</p> <p>Further, there will be cases when standard instruction forms, and acknowledgement forms may not be completed - for example in cases of urgency.</p>	
<p>Responsible officer: Terry Mortimer</p>	<p>Implementation date: 01 April 2022</p>

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Appendix I: Audit Brief (As Originally Issued)

About the Service Area

Legal Services provide legal advice and support to the Council, its Members and officers. The Service is carrying a number of vacancies and has recently deleted the Head of Service post. The Director of Law and Governance will fulfil this role.

About the Audit

We complete all our work in full conformance with [Public Sector Internal Audit Standards](#), [CIPFA's Local Government Application Note](#) and the [Institute of Internal Audit's International Professional Practices Framework](#).

This includes the internal auditors' [Code of Ethics](#) that commits us to work with integrity, objectivity, confidentiality and competence.

The audit seeks to provide assurance over the administration and processing of Legal cases as well as the Service's integration into Council processes.

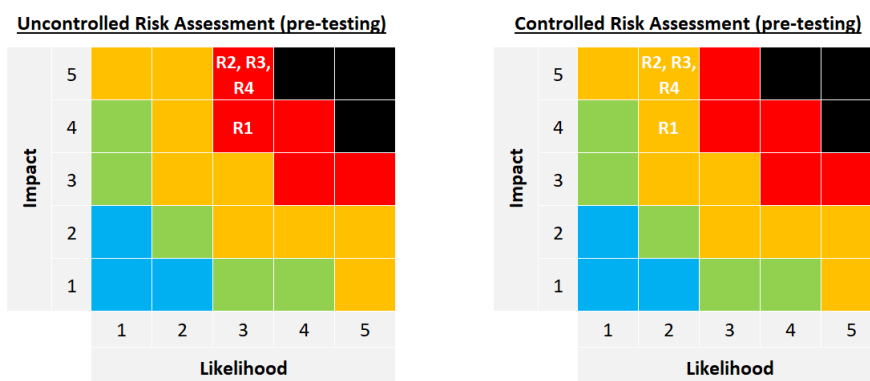
Based on the Services' objectives we have agreed 4 risks:

Objective	Risk Title
To provide timely, relevant and comprehensible legal advice to the Council, its Members and Officers.	R1. Legal Service not sufficiently integrated into Council processes. R3. Legal Services not provided with comprehensive and timely instruction R4. Updated - Legal advice/support to clients is hindered by inadequate instruction and administrative processes
To conduct, on behalf of the Council, actual or threatened legal proceedings, and Ombudsman complaints that raise legal issues.	R2. Legal Services is not notified promptly of actual or threatened legal proceedings, and Ombudsman complaints that raise legal issues. R3. Legal Services not provided with comprehensive and timely instructions.

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	R4. Updated - Legal advice/support to clients is hindered by inadequate instruction and administrative processes
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We have used the following risk assessments to guide the testing we will undertake:



Our finding in this review will contribute towards the **internal controls** aspect of the Head of Audit Opinion, to be issued in June 2021.

Evaluation Criteria

Management currently base their assessment on performance of the service on:

- Internal procedures and service standards
- Professional standards e.g. Law society

We are satisfied they are appropriate criteria and will use the same to guide our review as well as best practice guidance from LEXCEL.

Audit Testing

Audit Tests	Sample Size
Evaluate process to provide updates to service users	0
Verify regular updates are provided to service users	0
Evaluate process to issue and update standing instructions	0
Verify evidence of standing instructions	3
Evaluate process to inform Legal Services of Ombudsman complaints with legal implications	0
Test a sample of Ombudsman complaints involving legal issues to ensure Legal Services were promptly notified	5

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Audit Resources

Based on the objectives, scope and testing identified we expect this review will need **17.50** days' work to complete.

Audit Timeline

- Fieldwork Begins 22 April 2021
- Draft Report Issued 23 June 2021 (*responses received and finalised on 01 September 2021*)

Audit Resources and Timeline Outturn

We completed this engagement 1.5 days over our original budget. This additional time was owing to the complex nature of some of the findings and to allow for time to meet with the service to ensure that all details in the report were factual and that each response had been given due consideration before being finalised. Due to Summer leave, this also meant that our report went over our original timeline estimates.

Disclaimer and Report Distribution

There are inherent limits to internal audit's work. All control systems, no matter how well designed, are vulnerable to risk of failure. This might arise, for example, following poor judgement, human error, deliberate subversion or unforeseeable circumstances. Our assessment of controls covers the period set out in scope detailed in the *About the Audit* section. As a historical review it may not provide assurance for future periods. This may be, for example, where control design becomes inadequate in changed circumstances or compliance with procedures weakens over time.

It is the responsibility of management to develop and preserve sound risk management, internal control and governance. Internal audit work cannot substitute for management's responsibilities over system design and operation. We plan our work in line with relevant Standards and our agreed Audit Charter(s) to maximise the reasonable assurance we can provide. However, internal audit procedures alone, even when conducted with due professional care, cannot guarantee detection of fraud or error or eliminate risk of failure.

We prepare and deliver this document for and to the individuals and organisations named on the front cover and in the *Report Distribution List* section. We may use all or part in reporting to Members. We can accept no liability to any third party who claims to use or rely, for whatever reason, on its conclusions or any extract. Recipients should not share this

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Appendix II: Assurance & Priority level definitions

Assurance Ratings

Full Definition	Short Description
Strong – Controls within the service are well designed and operating as intended, exposing the service to no uncontrolled risk. There will also often be elements of good practice or value for money efficiencies which may be instructive to other authorities. Reports with this rating will have few, if any, recommendations and those will generally be priority 4.	Service/system is performing well
Sound – Controls within the service are generally well designed and operated but there are some opportunities for improvement, particularly with regard to efficiency or to address less significant uncontrolled operational risks. Reports with this rating will have some priority 3 and 4 recommendations, and occasionally priority 2 recommendations where they do not speak to core elements of the service.	Service/system is operating effectively
Weak – Controls within the service have deficiencies in their design and/or operation that leave it exposed to uncontrolled operational risk and/or failure to achieve key service aims. Reports with this rating will have mainly priority 2 and 3 recommendations which will often describe weaknesses with core elements of the service.	Service/system requires support to consistently operate effectively
Poor – Controls within the service are deficient to the extent that the service is exposed to actual failure or significant risk and these failures and risks are likely to affect the Council as a whole. Reports with this rating will have priority 1 and/or a range of priority 2 recommendations which, taken together, will or are preventing from achieving its core objectives.	Service/system is not operating effectively

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Finding, Recommendation and Action Ratings

Priority 1 (Critical) – To address a finding which affects (negatively) the risk rating assigned to a Council strategic risk or seriously impairs its ability to achieve a key priority. Priority 1 recommendations are likely to require immediate remedial action. Priority 1 recommendations also describe actions the authority **must** take without delay.

Priority 2 (High) – To address a finding which impacts a strategic risk or key priority, which makes achievement of the Council's aims more challenging but not necessarily cause severe impediment. This would also normally be the priority assigned to recommendations that address a finding that the Council is in (actual or potential) breach of a legal responsibility, unless the consequences of non-compliance are severe. Priority 2 recommendations are likely to require remedial action at the next available opportunity, or as soon as is practical. Priority 2 recommendations also describe actions the authority **must** take.

Priority 3 (Medium) – To address a finding where the Council is in (actual or potential) breach of its own policy or a less prominent legal responsibility but does not impact directly on a strategic risk or key priority. There will often be mitigating controls that, at least to some extent, limit impact. Priority 3 recommendations are likely to require remedial action within six months to a year. Priority 3 recommendations describe actions the authority **should** take.

Priority 4 (Low) – To address a finding where the Council is in (actual or potential) breach of its own policy but no legal responsibility and where there is trivial, if any, impact on strategic risks or key priorities. There will usually be mitigating controls to limit impact. Priority 4 recommendations are likely to require remedial action within the year. Priority 4 recommendations generally describe actions the authority **could** take.

Advisory – We will include in the report notes drawn from our experience across the partner authorities where the service has opportunities to improve. These will be included for the service to consider and not be subject to formal follow up process.