

Thanet District Council

Section 24 Statutory recommendations

12 October 2021



Thanet District Council
Cecil Street
Margate
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12 October 2021

Dear Members

[Recommendations made under section 24 schedule 7 of the Local Audit and Accountability Act 2014](#)

Our responsibilities

As well as our responsibilities to give an opinion on the financial statements and assess the arrangements for securing economy, efficiency and effectiveness in Thanet District Council's use of resources, we have additional powers and duties under the Local Audit and Accountability Act 2014. These include powers to issue a public interest report, make written recommendations, apply to the Court for a declaration that an item of account is contrary to law, and to give electors the opportunity to raise questions about the Council's accounts and to raise objections received in relation to the accounts.

We have concluded that it is appropriate for us to use our powers to make written recommendations under section 24 of the Act, due to inadequate arrangements in governance in responding to whistleblowing, grievances and disciplinary procedures with the direct financial costs adding further pressure to a fragile financial position. Further details are set out in the attached report. This report follows our letter to the Governance and Audit Committee in July 2021.

What does the Council need to do next?

Schedule 7 of the Local Audit and Accountability Act 2014 requires the following actions:

The Council must consider the recommendations at a meeting held before the end of the period of one month beginning with the day on which it was sent to the Council.

At that public meeting the Council must decide

- Whether the recommendations are to be accepted
- What, if any, action to take in response to these recommendations.

Schedule 7 specifies the meeting publication requirements that the Council must comply with.

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Background to the recommendations

We have concluded that it is appropriate for us to use our powers to make written recommendations under section 24 of the Act, due to inadequate arrangements in governance in responding to whistleblowing, grievances and disciplinary procedures with the direct financial costs adding further pressure to a fragile financial position. The Thanet District Council's (the Council) 2018/19 and 2019/20 value for money conclusions have not yet been issued with the last certificate closing the audit issued for 2017/18.

Governance arrangements for whistleblowing, grievances and disciplinary procedures

Throughout 2019 and 2020, a series of interlinked complaints and grievances were raised which included a number of officers and the four Senior Officers of the Corporate Management Team (the three Senior Statutory Officers and Corporate Director - Communities referred to as the Senior Officers in this report). Initially the General Purposes Committee considered all matters before establishing the General Purposes Investigations and Disciplinary Sub-Committee (IDSC) to deal with the matters pertaining to the Senior Statutory Officers in February 2020 and the IDSC first met in August 2020 and as at 30 September 2021 the matters remain in progress. Our 2019/20 value for money conclusion remains outstanding pending the Council's resolution of the matters before the IDSC.

Our findings to date include

- A serious breakdown in relationships between the four Senior Officers from 2019 to the present
- A number of interlinked instances of whistleblowing, lodging of formal grievances and disciplinary action including examples of serious allegations made by Senior Officers without adequate, or in some cases any, supporting evidence

- Missed opportunities to de-escalate, mediate or moderate the situation

There are key deficiencies in the Council's governance processes including

- Failure to adopt promptly the governance principles by the Joint Negotiating Committee (JNC) for Chief Officers of Local Authorities. (Issued in 2015 and adopted in 2020)
- Failure to manage whistleblowing cases, grievances and disciplinary cases and their outcomes promptly and systematically
- Failure to follow through with agreed outcomes or to deliver definitive resolution by the General Purposes Committee
- Failure to identify and mitigate perceived and actual conflicts of interest in the choice of senior manager responsible for investigating and deciding the outcome which has allowed the subject of complaints to influence the governance process
- Failure to involve Elected Members at an appropriate stage
- Failure to establish clarity and recognise statutory responsibilities in relation to whistleblowing

Background to the recommendations

Other review findings

The Council has commissioned, and paid for, a number of external reports into specific whistleblowing, grievances and disciplinary cases. We have considered eight separate reports by six external independent reviewers over the past two and a half years.

The reports, and the handling and use of these reports by the Council, show themes in common including

- Independent reviewers identified at least two separate cases where they considered there to be clear evidence of bullying and the Council took disciplinary action only on appeal following a third independent review.
- Individuals raising grievances and whistleblowing complaints, that we consider to have merit, being subject to disciplinary action prior to the substance of their complaints being formally considered.
- Senior Officers' behaviour was found to fall below the standard expected on a number of occasions, indicating a repeated pattern of behaviour by some individuals. Follow up action taken was not sufficiently robust or consistent with action taken against other Senior Officers. In our view, this contributed to further escalation
- In our view the Council has commissioned a particularly wide range of independent expert professional advice relating to these matters, including legal advice. In some instances, the advice has been interpreted selectively, ignored, discredited or restricted in its circulation to members.
- Perceived procedural errors and technicalities being used to discredit independent review findings and to justify inaction, rather than addressing the substance of the findings.
- The reports include a conclusion that where the Council had appropriate policies and procedures for dealing with grievances and staff performance issues, to protect staff from inappropriate behaviours, these were not adhered to by Senior Officers in a number of instances.
- The outcome and recommendations of independent reviews, when considered both individually and cumulatively, not being adequately or proportionately reflected in the Council's response.

Background to the recommendations

Consequences

The consequences to the Council to date are the

- Direct financial cost of external legal advisors in excess of £700,000 has been accounted for in the draft 2020/21 financial statements together with the need for retrospective budget approval for a significant unbudgeted cost
- Potential financial cost to remedy the claims currently before Employment Tribunal (which have not been included in the draft financial statements)
- Ability of the Senior Officers to work together to develop and deliver an effective Council strategy has been compromised, particularly in the context of the acute risks to financial sustainability in the medium term.
- Significant time and effort from the Senior Officers, other members of the Corporate Management Team and Elected Members diverted to dealing with these matters
- The Council's management culture has allowed the perception that attempts to raise legitimate concerns will be met by disciplinary action. This has been described by one independent reviewer as a 'culture of overt bullying, intimidation victimisation or humiliation within Thanet District Council'
- In our view, the Council's duty of care to officers has been compromised due to the length of time individuals have had to suffer significant reputation damage without resolution

Financial position

The Council's financial position remains fragile. In our 2019/20 Audit Findings Report we reported that

'It remains critical to your financial health that you continue to take action to control costs and deliver identified savings.'

And we concluded that

'the level of savings needed represents a significant challenge for the Council combined with a low level of reserves. There is very little headroom to cope with any further cost pressures or income reduction without reducing reserves further'

The financial costs of the external legal advisors were not included within the original 2020/21 budget. Any increase in legal costs together with the costs of any potential remedy will create further cost pressures that the Council will be unable to meet without reducing reserves further. As we highlighted in 2019/20 a further reduction will lead to

'Either reserves levels becoming unsustainable or rapid service cuts being required to maintain a sustainable position'

At March 2021, the Council's unaudited financial statements show a General Fund reserve of £2 million and the Earmarked Reserves of £23.7 million of which the Council has identified £2.1 million to be available for unforeseen circumstances. Action is needed urgently to address the escalating costs, re-establish appropriate governance arrangements and put the Council on a sustainable financial footing.

Background to the recommendations

We wrote to the Governance and Audit Committee in July 2021 raising our concerns in private due to the personal nature of the detailed allegations.

Since then

- The IDSC meeting to resolve the remaining matters has been deferred to early November 2021 at the earliest which will be more than two years after the initial allegations were raised and a further delay to meeting the verbal assurances provided to the external auditor in July 2020 that the matters would be resolved by Autumn 2020.
- Further whistleblowing and grievances have been received in relation to the interlinked cases
- Matters have been raised with the auditor which allege that despite independent review recommendations, the requested remedy has not provided. We are concerned that the Council may leave itself open to further challenge.
- Further employment tribunal claim submitted
- We have received representations in our role as external auditor from a number of local electors, employees, union representatives, ward councillors and a local Member of Parliament on matters referred to in this report

We have concluded that it is appropriate for us to use our powers to make written recommendations under section 24 of the Local Audit and Accountability Act 2014, as the Council has not addressed our concerns and has allowed matters to continue to escalate.

The position described represents a failure of governance with

- Serious concerns about the ability of senior officers to work together in a way that optimises effectiveness and builds a healthy management culture in the best interest of the Council
- Members not taking effective action early in some instances
- Escalating costs adding unsustainable cost pressures to a fragile financial position
- The Council's response to challenge being to identify procedural matters which in our view delays the discussion of the serious nature of the underlying concern.

Page 7 sets out our statutory recommendations. Schedule 7 of the Local Audit and Accountability Act 2014 requires the Council to consider the recommendations in a public meeting and decide whether the recommendations are to be accepted and what, if any, actions to take in response.

Recommendations made under section 24 schedule 7 of the Local Audit and Accountability Act 2014

Area	Recommendation	Responsible Officer / Due date
Improving governance	<p>Commission an experienced, independent Monitoring Officer from a large local authority to report to the General Purposes Committee on</p> <ul style="list-style-type: none"> • A risk assessment of the current employment tribunal claims and propose actions which safeguard the Council's best interests including a detailed financial analysis of the options available to the Council • An assessment of the status of all outstanding grievances, alleged whistleblowing complaints and any continuing suspensions and propose a plan of action to address them • A lessons learnt report collating themes and recommendations from all externally commissioned reports and any other appropriate evidence 	The Leader and the Chief Executive / November 2021
Improving governance	Bring the current IDSC process to a conclusion with clear actions that are reported and action monitored	Chair of the IDSC / November 2021

Recommendations made under section 24 schedule 7 of the Local Audit and Accountability Act 2014

Area	Recommendation	Responsible Officer / Due date
Financial sustainability	Revisit the financial plans and identify additional savings plans to address the further cost pressures created in resolving the grievances and whistleblowing complaints.	The section 151 officer and the Cabinet Portfolio Holder for Finance / November 2021
Improving governance	Agree an approach where the Council demonstrates that it is responding to the substance of concerns raised including a clear agreement on where Officer and Member responsibilities lie.	The Leader and the Chief Executive / November 2021

