



Oversight and Governance

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AUDIT AND GOVERNANCE COMMITTEE – SUPPLEMENT PACK

Tuesday 10 September 2024
2.00 pm
Warspite Room, Council House

Members:

Councillor Allen, Chair
Councillor Finn, Vice Chair
Councillors Cuddihee, P.Nicholson, Raynsford and Stevens.
Independent Member - Mrs Benny.

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

You can watch any of our webcast meetings on [YouTube](#). For further information on attending Council meetings and how to engage in the democratic process please follow this link - [Get Involved](#)

Tracey Lee
Chief Executive

Audit and Governance Committee

- 9. Health, Safety and Wellbeing Annual Report 2023/24 (Pages 1 - 34)**
- 10. Family of Companies Governance Framework (Pages 35 - 64)**

Audit and Governance Committee



Date of meeting:	10 September 2024
Title of Report:	Health, Safety and Wellbeing Annual Report 2023-2024
Lead Member:	Councillor Sue Dann (Cabinet Member for Customer Services, Sport, Leisure and HR and OD)
Lead Strategic Director:	Chris Squire (Service Director for HROD)
Author:	Kirstie Spencer (Head of Health and Safety)
Contact Email:	Kirstie.spencer@plymouth.gov.uk
Your Reference:	HSW Annual Report 23-24
Key Decision:	No
Confidentiality:	Part I - Official

Purpose of Report

The annual Health, Safety and Wellbeing (HSW) Report is a statement of Plymouth City Council's (PCC) performance against its HSW Policy, and performance objectives detailed in HSW Performance Standards and the HSW Corporate Action Plan. It is an integral aspect of HSW governance.

This annual report covers the period 1 April 2023 to 31 March 2024. PCC demonstrates a strong commitment to Health, Safety and Wellbeing evidenced throughout this annual report.

Recommendations and Reasons

- I. The Audit and Governance Committee is recommended to note the contents of this report and to communicate and role-model positive HSW performance and leadership and actively improve and maintain individual HSW competency.

Alternative options considered and rejected

- I. N/A

Relevance to the Corporate Plan and/or the Plymouth Plan

The health, safety and wellbeing of employees and anyone affected by our undertakings, underpins all aspects of the corporate plan and ensures we uphold our legal, moral and financial duties.

Implications for the Medium Term Financial Plan and Resource Implications:

Resources required to assess and manage health, safety and wellbeing risks are allocated at local level, with a Corporate Contingency included in the MTFP for larger capital investment requirements.

Financial Risks

Financial risks may be realised following non-compliance with HSW Management System.

Carbon Footprint (Environmental) Implications:

None

Other Implications: e.g. Health and Safety, Risk Management, Child Poverty:

* When considering these proposals members have a responsibility to ensure they give due regard to the Council’s duty to promote equality of opportunity, eliminate unlawful discrimination and promote good relations between people who share protected characteristics under the Equalities Act and those who do not.

Detailed within the appended report

Appendices

*Add rows as required to box below

Ref.	Title of Appendix	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</i>						
		1	2	3	4	5	6	7
A	Health, Safety and Wellbeing Annual Report 2023 - 2024							

Background papers:

*Add rows as required to box below

Please list all unpublished, background papers relevant to the decision in the table below. Background papers are unpublished works, relied on to a material extent in preparing the report, which disclose facts or matters on which the report or an important part of the work is based.

Title of any background paper(s)	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</i>						
	1	2	3	4	5	6	7
N/A							

Sign off:

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Originating Senior Leadership Team member: Chris Squire (Service Director for HROD)

Please confirm the Strategic Director(s) has agreed the report? Yes

Date agreed: 06/08/2024

Cabinet Member approval: Councillor Sue Dann (Cabinet Member for Customer Services, Sport, Leisure and HR and OD)

Date approved: 28/08/2024

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**HEALTH, SAFETY AND WELLBEING ANNUAL REPORT
2023-2024**

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- 13.0 [Appendix A HSW Action Plan](#)

1.0 EXECUTIVE SUMMARY

The Annual Health, Safety and Wellbeing (HSW) Report is a statement of Plymouth City Council's (PCC) performance against its HSW Policy, and performance objectives detailed in HSW Performance Standards and the HSW Corporate Action Plan ([Appendix A](#)).

This annual report covers the period 1 April 2023 to 31 March 2024. The statistics published in the previous annual report, published for the period 2022/2023, have been used to benchmark 2023/2024 data.

Plymouth City Council demonstrates a strong commitment to Health, Safety and Wellbeing evidenced throughout this annual report. Most notably, the following activities have strengthened the HSW management system during this financial year:

- Appointment of Head of Health, Safety and Wellbeing, move of Health and Wellbeing Advisor post into the HSW Team, HSW Culture Assistant vacancy filled.
- Review and update of the HSW Policy, significantly drawing out wellbeing as an important independent discipline and including Council and Audit and Governance Committee in the governance arrangements.
- HSW Corporate Action Plan in place following the external review carried out in 2023.
- Steering Group review of Terms of Reference, membership and focus of key activities.
- Integrated management of Corporate HSW and Building Statutory HSW Compliance with Facilities Management – weekly Technical Specialists meeting attended by HSW and FM. Further enhanced by the Head of HSW taking the interim Service Lead for FM in March 2024.
- Assure development – Incident, Risk and Audit modules now in full use across PCC.
- Audit programme – Key activity to assess compliance with HSW Policy and HSPS KPI's. This years programme included 10 service level audits carried out by HSW Team and a further 13 Street Services audits carried out by Street Services HSW Advisor.
- HSW Coordinators – Now in place in the majority of areas, still further work required to ensure they are in place across all areas. Monitored through Steering Group.
- There are now 47 Wellbeing Champions nominated across PCC, supported by the Health and Wellbeing Advisor

2.0 GOVERNANCE AND ACCOUNTABILITY

Accountability for HSW sits with the Chief Executive Officer of the Council. Arrangements describing how this accountability is discharged are outlined in the [HSW Policy](#).

The Executive Lead for HSW and Chair of the HSW Steering Group is the Director for Human resources and Organisational Development. The Council's Portfolio Holder for HSW is Councillor Sue Dann

The health and safety management system HSG65 (Managing for Health and Safety) is the system which PCC has implemented to achieve good HSW performance and compliance.

HSW information and guidance is held and accessible centrally on HSW Share Point Site [here](#).

3.0 HSW STEERING GROUP

The Health, Safety and Wellbeing Steering Group (HSWSG) is the Council's senior health, safety and wellbeing (HSW) assurance and decision-making body. The Group discusses and agrees policy, strategy and monitors HSW performance and risk across the Council. The HSWSG is chaired by the CMT Executive Lead for Health, Safety and Wellbeing, who leads on the development and

implementation of corporate plans to improve HSW performance and practice. Group members comprise of Service Directors and Heads of Service, appointed by their Strategic Directors.

The HSW Steering Group terms of reference, membership, purpose and objectives were reviewed and refreshed in December 2023 and published in March 2024. This is an essential HSW oversight group and attendance (or appropriate representation) is mandated through the ToR.

4.0 HSW POLICY, PERFORMANCE STANDARDS (HSPS) AND GUIDANCE

A new [HSW Policy](#) was published May 2024.

HSP Performance Standards:

- All new or updated HSPS now have a [Share Point page](#) (with links, FAQ's, Summary details, glossary etc.)
- 5 HSPS have been reviewed and updated
- 1 new policy has been completed and is awaiting review & publication (Infection Control)
- 2 New HSPS have been written and published (Personal Protective Equipment (PPE) & Respiratory Protective Equipment (RPE) and Working on or near Roads)
- Review is underway on 3 HSPS (First Aid, Control of Contractors and Construction Design and Management (CDM))
- 11 new HSPS require development, of which 2 are currently underway (Project Management and Protect Duty)
- Reviews are pending for 10 existing HSPS
- The total number of HSPS that are either active, under review, pending review or requiring development is 31.

5.0 INCIDENTS

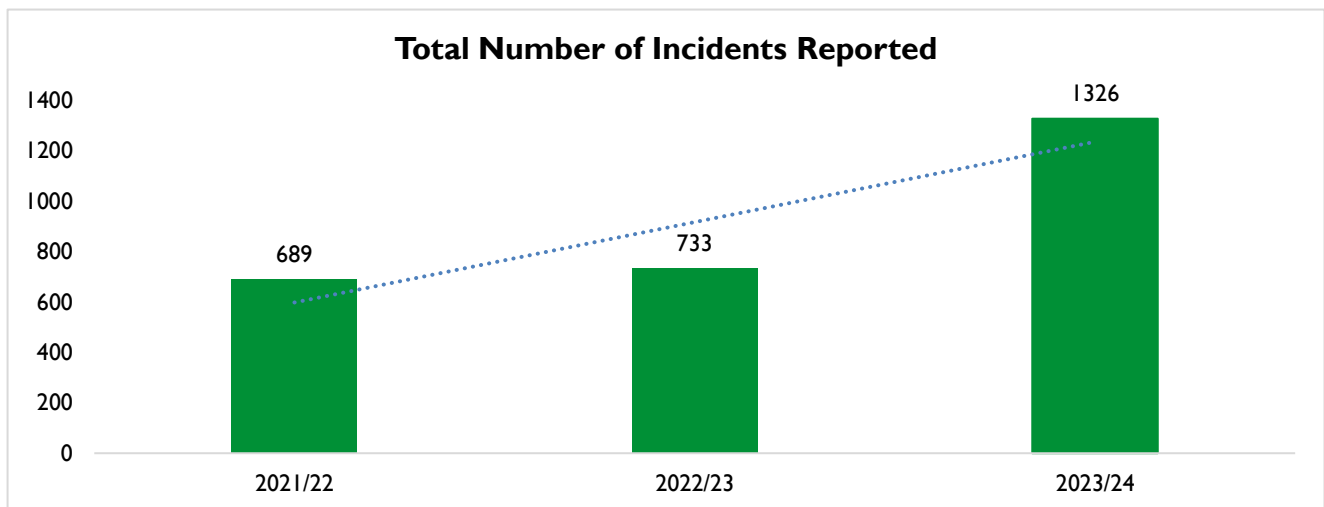
- The total number of incidents reported in 2023/24 has increased by 593 from 2022/23 (a 45% increase). There are two factors influencing this increase; the Assure system facilitating both reporting and management of incidents and also the increased drive and monitoring of incident reporting through Senior Leadership forums.
- The Council has reported 22 RIDDORS in this reporting period. (Excludes maintained schools and partner organisations)
- Reporting of incidents on time - The KPI for 2023/24 is 100% reported within 4 days. The mean figure over the year 2023/24 is 91% which is an increase of 4% from 2022/23. (Note – this KPI changed from 4 days to 2 days in April 2024 in line with HSW Management System expectations).
- The 2023/24 mean figure for near miss reports is 19.3%, below the 20% target, compared to 22.8% for 2022/23. Considering the total number of incidents increased by 593 in this reporting period, this is a significant decrease. Increasing near miss reporting is already an action for the Steering Committee and will be an ongoing action in the HSW Corporate Action Plan.
- Lost time incidents (LTI) resulted in an average of 4.25 days absence, however, data is incomplete with 27.3% of LTI's having no return to work dates. This requires automated sickness absence information from the HROD system which can hopefully be provided once the new e-HR system is implemented.
- Serious incidents and near-misses continue to be escalated in real time to ensure remedial actions are put in place in a timely fashion. There have been 16 “High Risk” alerts issued in 2023/24 by the Health, Safety and Wellbeing Team to the Head of Health, Safety and

Wellbeing, Director of HROD, HSW Steering Group, HR Business Partners, TU Reps and all relevant managers. This is a decrease of 7 from the previous reporting period. For each incident a Health, Safety and Wellbeing Advisor works alongside the Service in support of producing a suitable and sufficient incident investigation to inform future practice.

- An analysis of the root causes and learning from these incidents is shared through the HSW Steering Group.

5.1 Overall Incident Data

The total number of incidents reported in 2023/24 has increased by 45% from the previous year, which is a significant improvement in incident capture across the Council. This is most likely attributed to the development and roll-out of the Assure HSW e-management system and the drive from senior leaders to report all incidents.



Directorate / Service	Actual Number of Incidents Reported 1/4/23 – 31/3/24	% of Total
Adults, Health & Communities	209	15.8%
Childrens Services	391	29.5%
Customer and Corporate Services	222	16.7%
Chief Executive Office	0	0%
Office of the Director for Public Health	29	2.2%
Place	475	35.8%
Total	1326	

5.2 Incident KPI Data

PCC currently has three KPI's related to incident management:

KPI	Measure
Incidents reported on time (Recorded on Assure – through portal or directly)	KPI – 100% Within 4 days of the incident date

<p>Incidents closed on time</p> <p>(Approved on Assure, with all actions completed within a given timeframe from the date of incident, based on their level of severity.)</p>	<p>KPI – 100%</p> <p>Severity Timescales: Insignificant/ Minor severity = 14 days Moderate severity = 28 days Major severity = 42 days</p>
<p>Percentage of near miss reports</p> <p>(Near miss reporting can prevent actual accidents)</p>	<p>20% of the total number of incidents reported.</p> <p>(Aspiration is 50%)</p>

KPI I – Incidents Reported on Time

All directorates are above 90% compliance, with the exception of Place, however, it should be noted that Place reported 35.8% of the total number of incidents across PCC and the risk profile within Place includes the majority of physical hazards.

Every team leader in Street Services has undertaken Assure refresher training (or booked to attend). Drop in sessions have been highlighted as a requirement at Place JCC. The Box now has a monthly H&S Committee meeting and all HSW Advisors now have 1:1's with Service Directors and/or HSW Coordinators. All HSW Advisors are now working to a portfolio delivery model. Assure licenced users and approvers have been reviewed and updated.

H&S Incident KPI Data - FY 2023/24

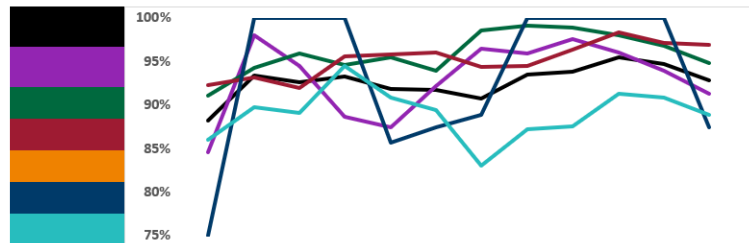
Headline Incident KPI Compliance:

KP1 - incident reporting on time:

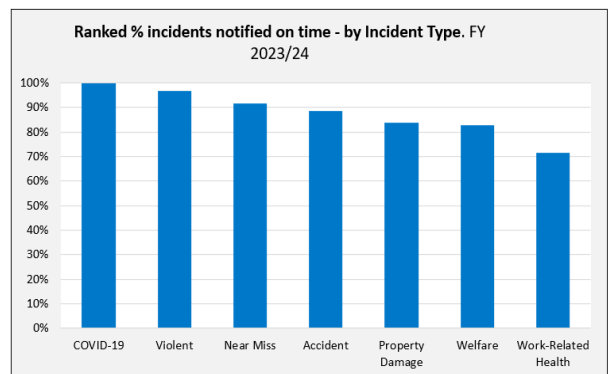
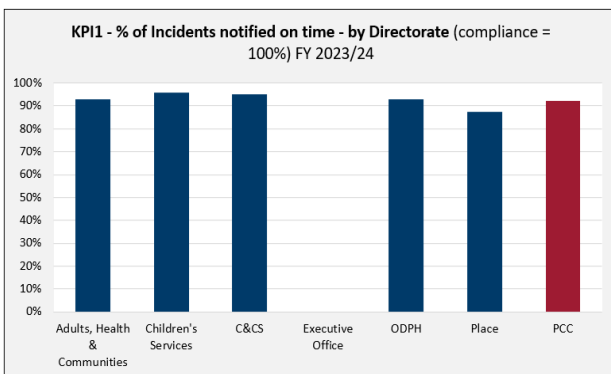
Compliance - 100%

PCC	92.2%
Adults, Health & Communities	92.8%
Children's Services	95.9%
C&CS	95.0%
Executive Office	No incidents
ODPH	93.1%
Place	87.6%

12 month trend

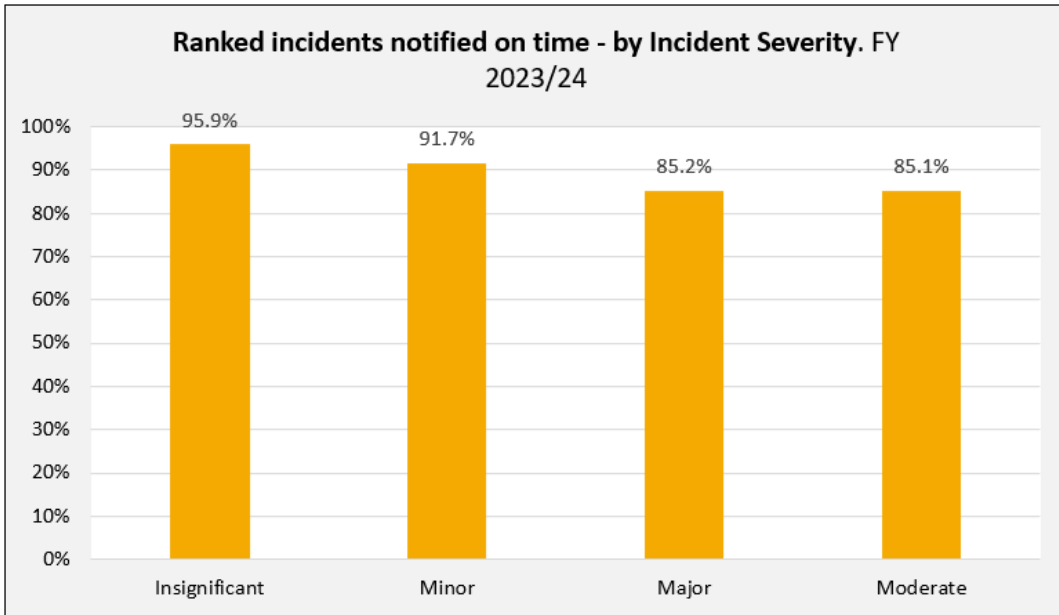


KPI 1: incidents reported on time - headline graphics

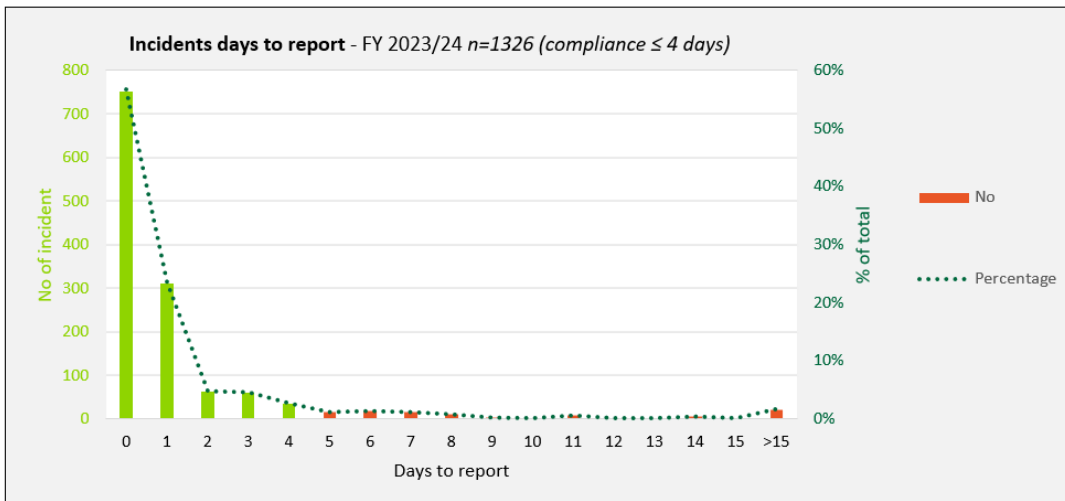


Incidents Notified on Time – Ranked by Severity

Work to improve the timescales for major and moderate incidents being notified is required and this will be addressed at the HSW Steering Group.



Incidents reported - No of days



KPI 2 – Incidents Closed on Time

Incident closure compliance (average compliance = 36.2%) is a long way below the 100% KPI requirement. This could be due to time constraints, knowledge of the processes on the Assure system or simply a lack of ‘Default Assigned Users’ in some areas (these are licenced users with responsibility for investigation and completion of actions). Compliance must be monitored at SLT / DMT meetings and action taken to improve compliance. The HSW Team provide training and support for all licenced users of the system. To improve compliance further, the HSW Team are now linking licence issue with training completion (new licence holders are signposted to the relevant course (e.g. Introduction to Risk Assessment or Incident Investigation), with licences suspended if training is not

completed. This will also improve competency of managers undertaking risk assessments and incident investigation.

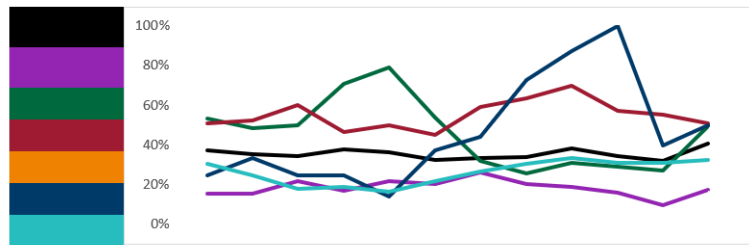
There is also a responsibility for “Default Approver” licenced users to review and approve incidents within the KPI timescale - “approved” status is the KPI measure – but this is believed to be a less significant compliance factor.

KPI 2 - incident closure on time:

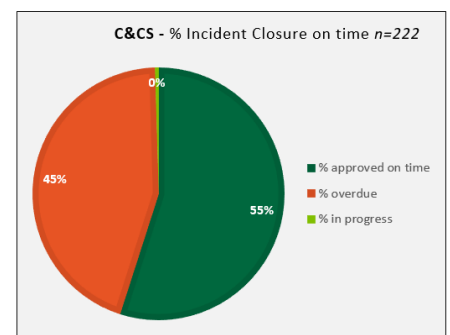
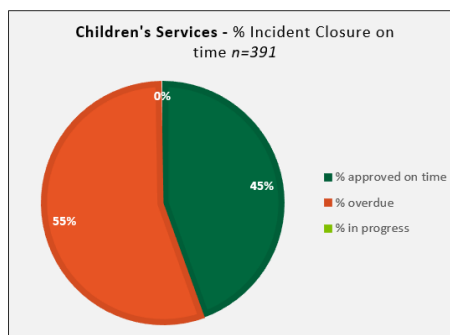
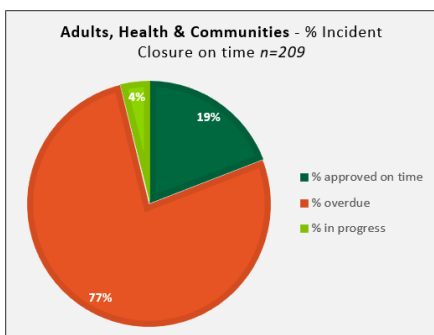
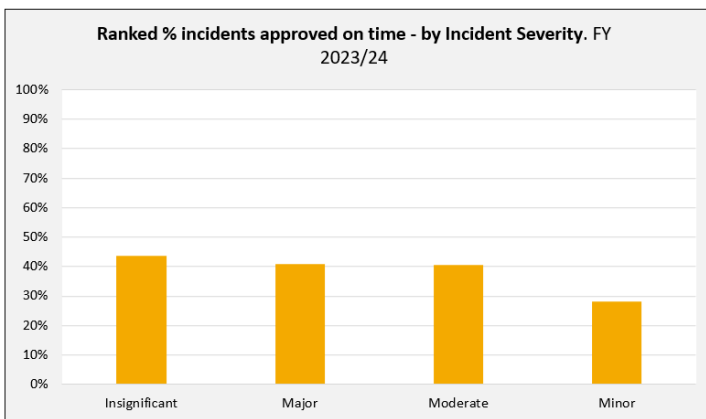
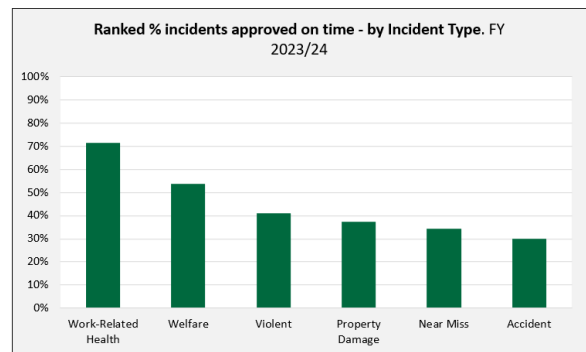
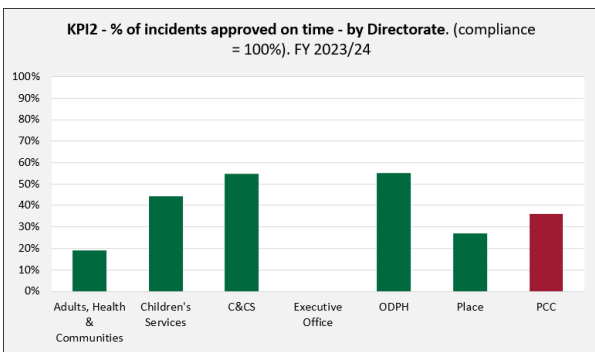
Compliance = 100%

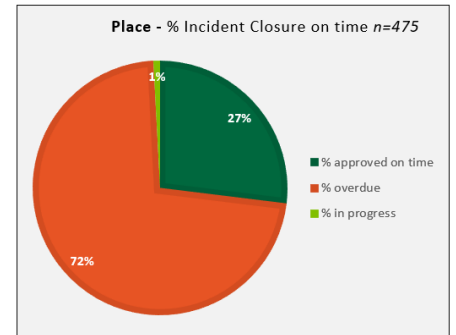
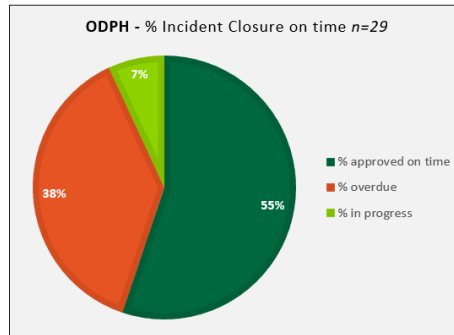
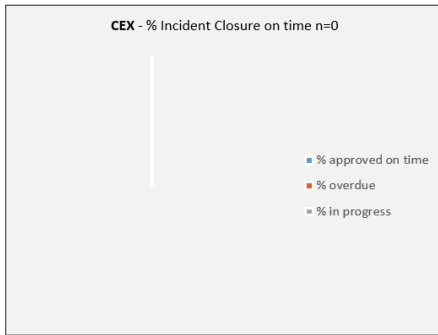
PCC	36.2%
Adults, Health & Communities	19.1%
Children's Services	44.5%
C&CS	55.0%
Executive Office	No incidents
ODPH	55.2%
Place	26.9%

12 month trend



KPI 2: incidents approved on time - headline graphics



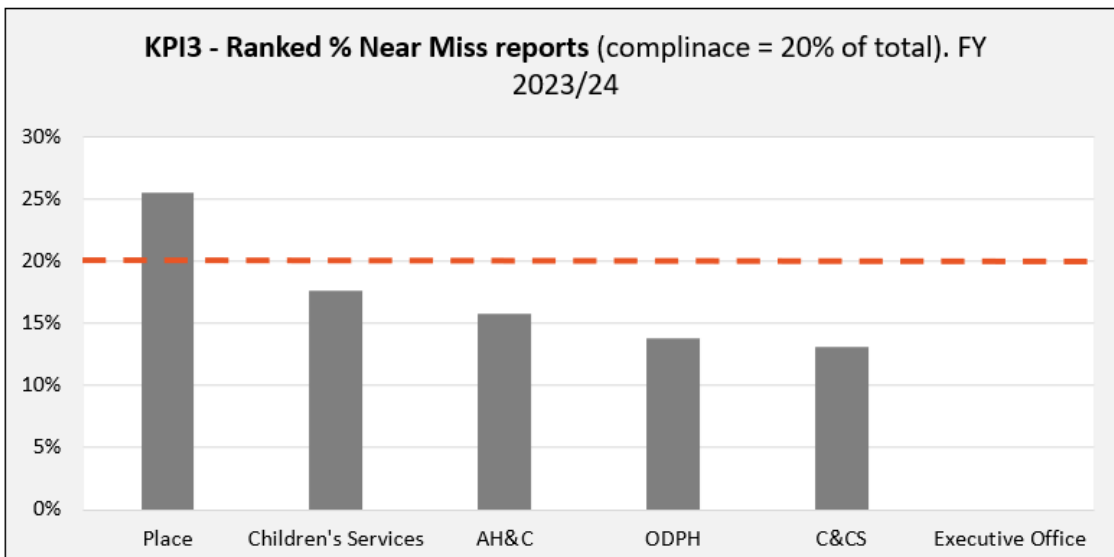


KPI 3 – Percentage of Near Miss Reports

The HSE, 2021¹ states that near misses are less severe than accidents. However, near misses should not be ignored or treated lightly, as they can provide valuable insight into how well you are managing health and safety in your workplace. A pattern of near misses provides an early warning that something needs attention. It makes good business sense to be proactive and take action early when problems are likely to be less serious. Near misses may seem trivial but they are a valuable source of information. Taking time to review the underlying causes is likely to reduce risk, improve health and safety, and save you time and money.

PCC KPI for percentage of near misses is 20%, PCC average is slightly below the average, however, the Place Directorate is compliant with 25.5%.

KPI 3: % near misses reported - headline graphics



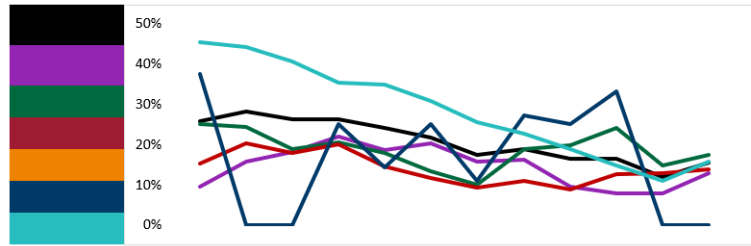
Dotted line indicates KPI

KPI 3 - % of near miss reports:

Compliance = 20%

PCC	19.3%
Adults, Health & Communities	15.8%
Children's Services	17.6%
C&CS	13.1%
Executive Office	NA
ODPH	13.8%
Place	25.5%

12 month trend



High Risk Incidents

Health and safety offences (Anon, n.d.)² are concerned with failures to manage risks to health and safety and do not require proof that the offence caused any actual harm. **The offence is in creating a risk of harm.**

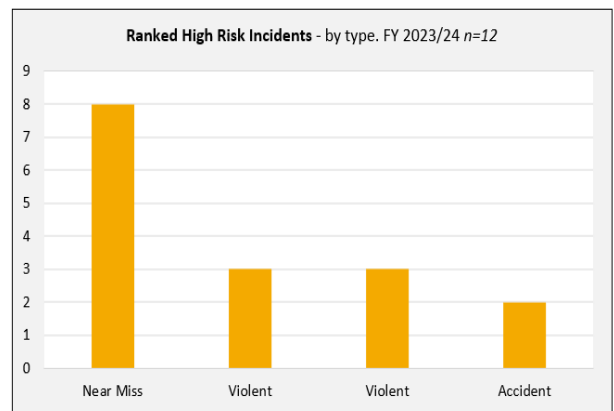
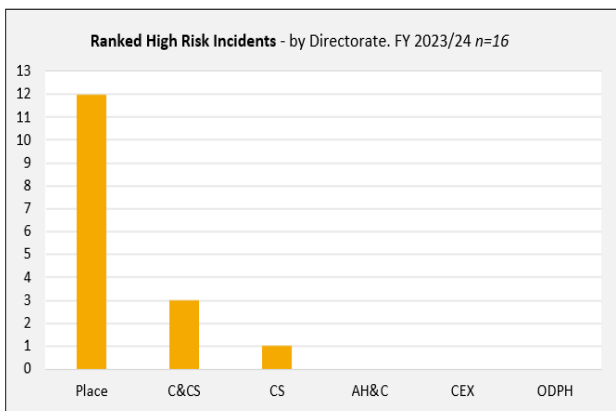
In response to this, as part of the incident triage function undertaken by the HSW Team, each incident is assessed to determine whether it is “High Risk” or not.

The definition of “High Risk” will be a subjective one, but broadly speaking would be any Adverse Event where, through an absence of mitigating risk controls, there is deemed to be either/or a high likelihood of injury/ harm or ill-health to any persons or where the consequences of any injury/ harm or ill-health would be severe. Adverse Events that have either/or a high likelihood or severe consequence in terms of environmental/ equipment or property damage would also qualify.

Specific definitions are available in [HSPS10 Incident Management](#), in the table on Accident Investigation Levels in Section 7. Broadly, we would consider any Adverse Event that fell within levels 3 or 4 to be “High Risk”, although there may be exceptions to this. A High-Risk Adverse Event encompasses more than just a “Serious incident” as defined in HSPS10. Near Misses will also be evaluated by the seriousness of harm that could have resulted. The Health and Safety Sentencing Guidelines 2016

HSW Advisors may review and alter the risk level of an Adverse Event (Incident, Near Miss or Hazard Observation) at any stage.

High Risk Incidents:



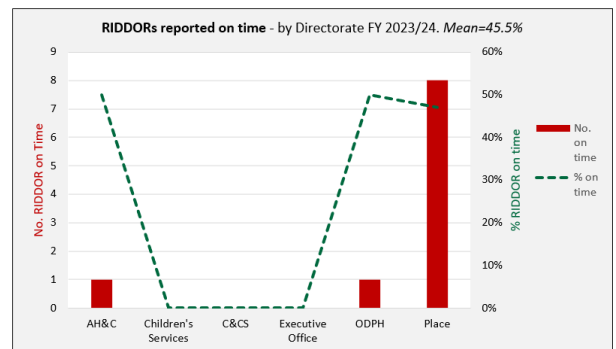
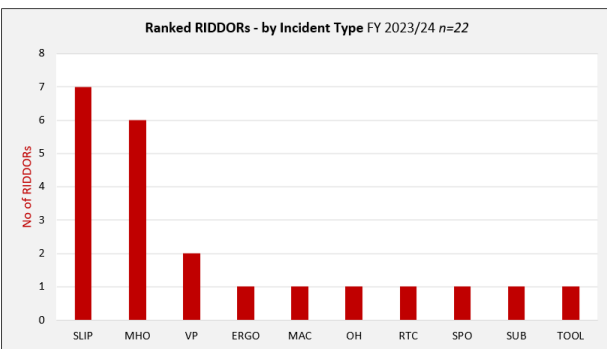
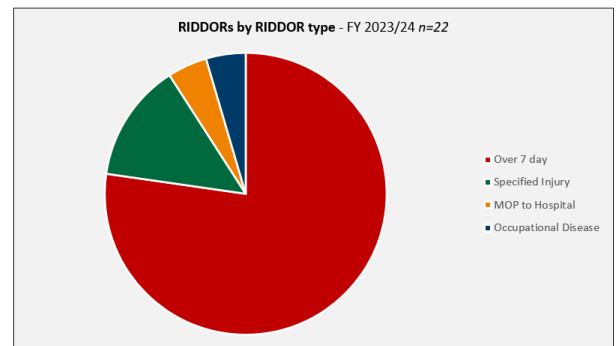
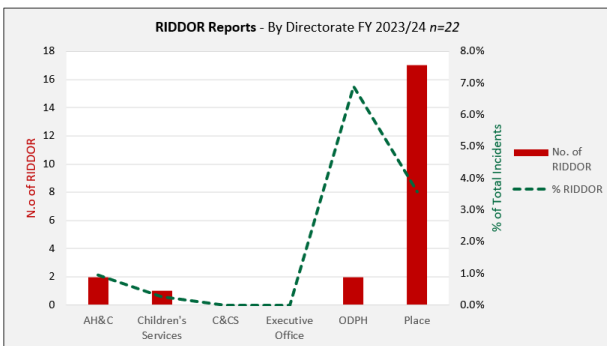
Reporting of Injuries Diseases and Dangerous Occurrences Regulations (RIDDOR)

The RIDDOR Regulations (Health and Safety Executive, 2013)³ set out the different types of incidents that must be notified to the HSE, which the HSE may decide to investigate further.

In the 12 months to 31 March 2024 there were 22 such incidents, which is equal to the previous 12 months reported (to March 2023). Maintained schools and partner organisations are excluded from this data.

The two top reasons for RIDDOR reports are consistent with national trends: Slips, Trips and Falls and Manual Handling, there is an upward trend for reports following violence and aggression (2023/24 =2, 2022/23 = 0). We are encouraging the reporting of violence and aggression and are developing the support available for managers and individuals through our Wellbeing offer.

RIDDORS (Excluding Schools/ Partner Orgs)

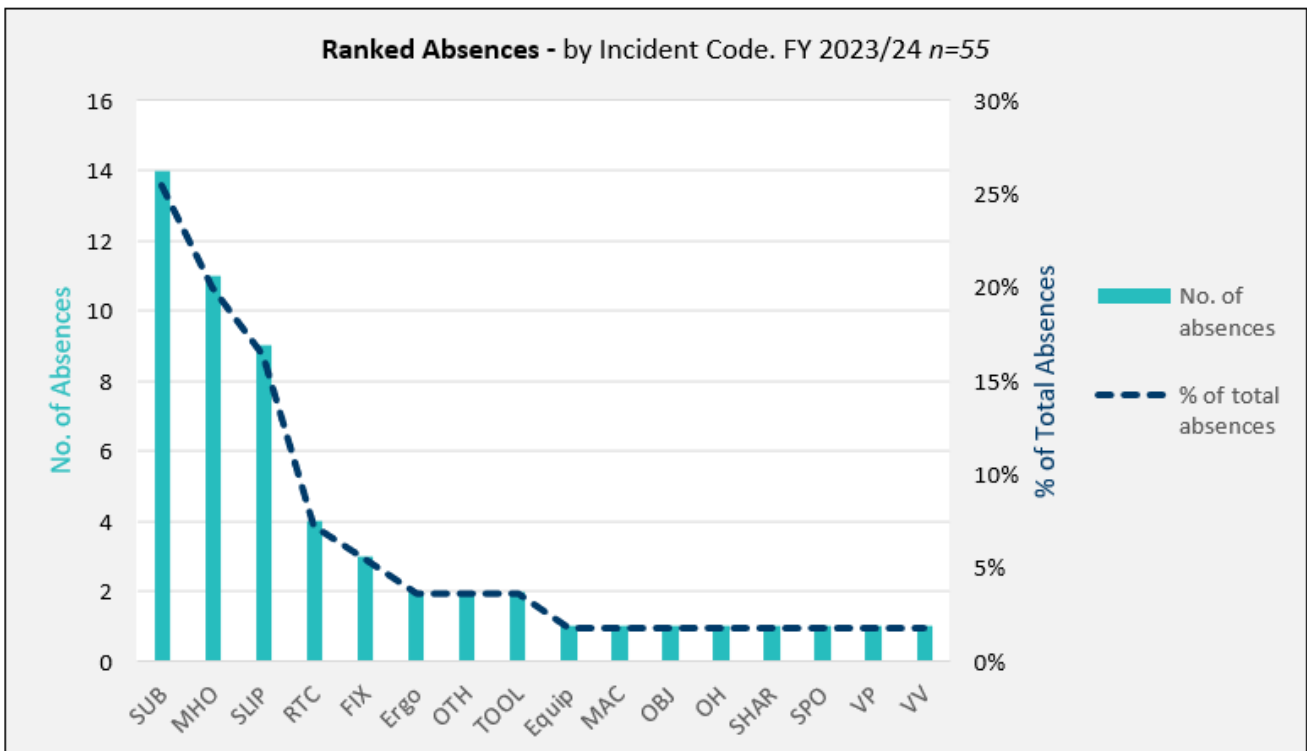
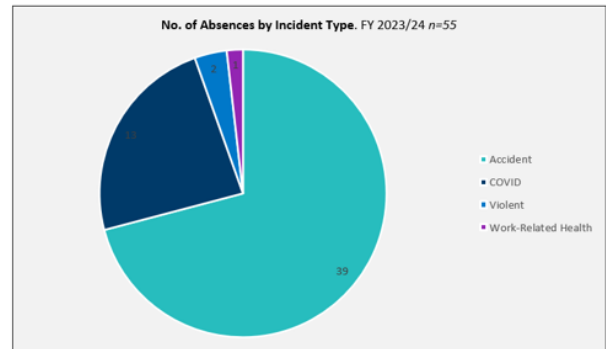
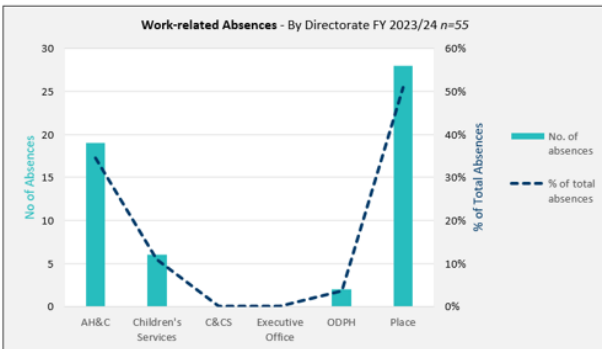


Key to Chart Data (Incident Codes)	
Injured by an animal or insects	ANI
Drowned, asphyxiated, or choked	ASPH
Injury from hot or cold contact (e.g. scald)	BURN
Dangerous Occurrence (RIDDOR definition)	DO
Display Screen Equipment	DSE
Contact with Electricity or Electrical discharge	ELEC
Exposed to fire	FIRE
Hit something fixed or stationary	FIX
Injured while handling, lifting or carrying	MHO
Near Miss	NM
Other kind of accident or incident	OTH
Hit by moving vehicle or other transport incident	RTA
Self-harm	SELF
Needlestick or sharps injury (Cut by sharp object)	SHAR
Slipped, tripped or fell on same level	SLIP
Exposed to or in contact with a harmful substance	SUB
Unintentional Violence	UV
Violent Person	VP
Verbally Assaulted or Threatened	VV

Lost Time Incidents

Lost time incidents are an important measure of health and safety performance and indeed, the HSE publish statistics annually which includes the Number of Working Days Lost due to work-related ill health and non-fatal workplace injury. The latest statistics from the HSE (Health and safety at work, 2023) for 2022/23, estimates that 35.2 million working days were lost during that period.⁴

Unfortunately, PCC data is incomplete (27.3% of LTI's have no return-to-work dates entered in the Assure system). This requires information from the HROD system, which we are hoping can be automated from the new HROD system once it is implemented.



Key to Codes:





SUB	Exposed to or in contact with harmful substances
MHO	Injured whilst lifting and carrying
SLIP	Slip, trip or fall on same level
RTC	(Road traffic collision) Hit by moving vehicle, in a vehicle involved in a collision or other transport incident

FIX	Hit something fixed or stationary
ERGO	Ergonomic event
OTH	Other kind of incident
TOOL	Injured whilst using hand tools
EQUIP	Work equipment issue or failure
MAC	Contact with moving machinery or material being machined
OBJ	Hit by moving, flying or falling object
OH	Work related ill health – Occupational disease
SHAR	Needlestick or sharps injury
SPO	Injured during sports activity
VP	Physically assaulted by a person
VV	Verbally assaulted or threatened

6.0 TRAINING

Managing, recording and reporting on mandatory and essential (role specific) HSW training is currently not consistent, not centrally available and relies on local managers creating and monitoring training needs matrices in their HSW Managers Toolkits. The Assure system is currently unable to record training data due to delays with implementation of the People Module (awaiting GDPR approval). Once this is implemented, all training data will be accessible through the system and managers can undertake training needs analysis and monitor compliance automatically. This is a key priority for 2024/25.

IOSH Managing Safely will be delivered face to face in house from September 2024. IOSH was previously delivered via e-learning due to the time impacts of training, but the feedback and outcomes of e-learning have been disappointing for attendees. Face-to-face delivery this allows direct 'tailoring' of delivery by the trainer for more effective outcomes and a more positive experience for the attendees. HSW Update for all Executive Directors (CMT) is planned for 10 September 2024, face to face.

Training	2022-23	2023-24	Trajectory
HSW Induction (e-learning)	63.6%	64.9%	
Managers Introduction to HSW Management	74%	65.7%	
IOSH Managing Safely	Not available	Not available	
IOSH for Senior Executives and Directors	Not available	Not available	

HSW training is delivered through a blended learning approach and includes:

Training	Number of Staff That Have Completed Training
HSW Induction (e-learning)	263
Managers Introduction to HSW at the council (e-learning + remote learning session)	21
IOSH Managing Safely	<i>Data not available</i>

IOSH for Senior Executives and Directors	<i>Data not available</i>
Wellbeing and Resilience Risk Assessment	70
Conflict Resolution Note: Current re-tendering of training delivery contract, so therefore a number of staff are on a waiting list.	211
Display Screen Equipment	38
Manual Handling (Safe Lifting Techniques)	34
Working at Height/Ladder Safety	14
Introduction to Risk Assessment	106
Incident Management	24

7.0 FIRE SAFETY

Fire Safety compliance is managed through the Hard Facilities Management Service and is highlighted on the HSW Risk Register as requiring review, additional controls, centralised assessment information, fire surveys and additional competent advice to bring compliance up to the appropriate standard.

As a result, data is not readily available through current fire safety management systems as detailed below:

- Number of alarm activations – *Unable to give an accurate number as not all alarms are monitored remotely.*
- Number of actual fires – Four
- Details of actual fires:
 - O.A.C Rooms (Social Care, family supervision centre) – arson in April 2024. The whole of the ground floor was fire and smoke damaged.
 - Ballard House – UPS fault in the server room on floor 3 in June 2024. Smoke damage.
 - Midland House – arson in April 2023.
 - The Box – arson in public external area. CCTV in place and signage improved. No further incidents.
- Fire Risk Assessments – No accurate data held centrally as assessments are held at individual site level only. A project is currently underway to move all assessments to a centrally held digital system, so accurate data will be available for subsequent reports.

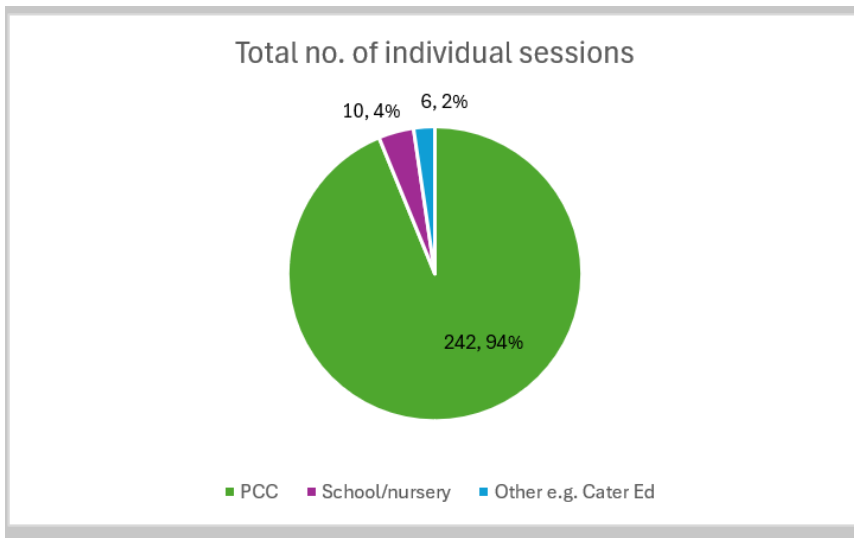
8.0 WELLBEING

Employee Assistance Programme

The contract for the Employee Assistance Programme, PAM Assist, was extended to March 2025. Currently we are awaiting the services of procurement to explore options and identify next steps. **122** individuals contacted the EAP in this reporting period, **213** calls.



It is important to note this includes all who have access to the EAP service. E.g. schools/nurseries and Cater Ed. Though, this is a small percentage with the majority being PCC. The chart below details the total number of counselling/CBT sessions in this period, and the percentage of those were PCC staff interactions.

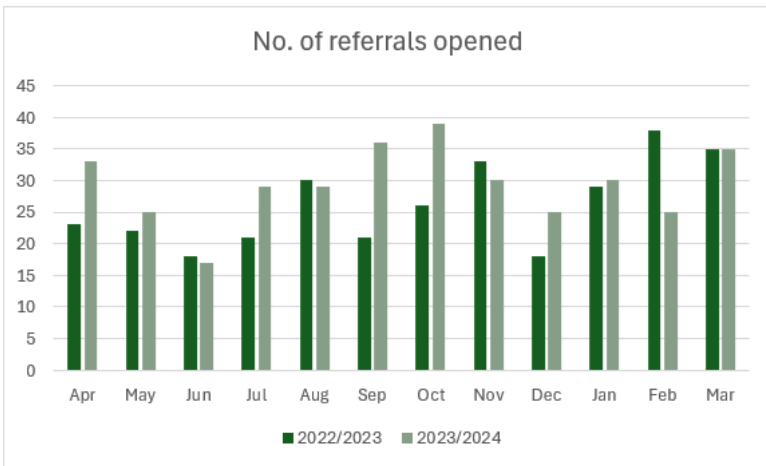


Occupational Health

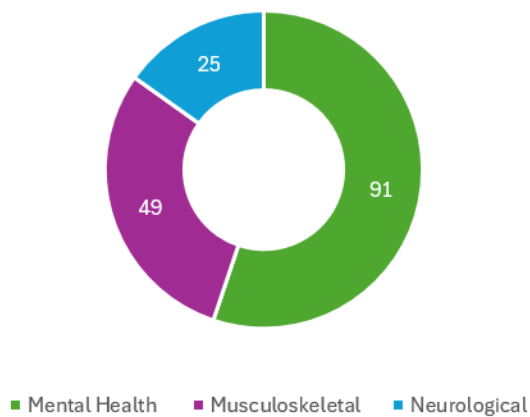
The contract for Occupational Health, Medigold Health, was extended to March 2025. Currently we are awaiting the services of procurement to explore options and identify next steps.

A total of **353** referrals were opened in this financial year.

This is an increase from last year of approximately **12%** - see graph below for details:



Top 3 conditions



The highest number of musculoskeletal conditions in the Place Directorate and the highest number relating to mental health conditions in the People Directorate.

Two RIDDOR Reports have been made in this period to the HSE, related to violence and aggression (leading to work-related stress):

- Aug 2023 – Violence and Aggression in Childrens, Young People and Families.
- December 2023 – Violence and Aggression in Highways, Compliance and Operations, Parking Team

General Health and Wellbeing

- A wellbeing action plan has been developed for 2024/2025. A review of Health and Wellbeing across PCC will be undertaken in the forthcoming year which will form the basis for the action plan 2025/2026. This will include a review of Health Surveillance across all services.
- #OurStaff campaign (targeted at violence and aggression) is prepared for launch, it is anticipated that this will happen in September 2024.

- Stress and Resilience management continues to be a significant risk, managers are strongly advised to attend the Stress and Resilience training for managers so that they are competent to undertake Stress Risk Assessments with their teams and any individuals that require them.
- The First Aid Health and Safety Performance Standard (HSPS) has been reviewed to ensure Mental Health First Aiders are considered in First Aid needs assessments. This requirement should be in place and forms uploaded to assure by end of August 2024.
- Developments / review and update of HSPS are communicated via staffroom, and through HSW Advisors attending SLT, DMT and JCC meetings.
- A further HSPS is being developed which will include the arrangements and framework for the management of Health and Wellbeing across all services.
- A Personal Safety Subgroup of the Steering Group is currently undertaking a project, reviewing the risks to, and safety of, our workforce to ensure that all preventive measures are aligned. Specifically lone working controls (including equipment) and critical safety information systems.
- Seven internal staff networks are now in place to support our diverse workforce:
 - Men's network
 - Disability network
 - LGBTQ+ network
 - Race, Ethnicity and Cultural Heritage network
 - Women's network
 - Faith and Belief network
 - Carer's network

9.0 AUDIT PROGRAMME

The audit programme was launched in September 2022 utilising the SHE Assure eSystem. The key purpose of the programme is to provide assurance of compliance with the Council's HSW Management System, based and prioritised on:

- Higher risk service areas – based on risk profiles
- Self-Assessments – evidenced to HSW Steering Group through HSW Managers Toolkits

Key – Score Descriptors

Score	Description
Red Above 80%	Major deficiencies found over a broad range of areas indicating significant lack of control and leaving the standards open to failure. Senior management need to direct that these deficiencies are rectified as soon as practically possible
Amber 60-80%	<p>Amber 1 - 70-80%</p> <p>The HSW System is considered to be placed at risk due to significant inadequacies of control in a number of critical areas, or over a wide range of control procedures. Senior managers are required to action prioritised areas of the HSW Action Plan</p> <p>Amber 2 - 60-69%</p> <p>Control systems found to be largely compliant. A small number of important lapses found or some "fine tuning" across the board required</p>
Green Below 60%	There is a sound system of control in place to meet overall system objectives. This is to be maintained and reviewed as necessary to reflect changes in the HSW policy/HSPSs

Details of audits carried out in this reporting period are as follows:

Q1

- **Programme paused for consolidation & development**

Q2

- **Place – Economic Development - The Box**
 - Lead Auditor – Rod Urwin
 - Date of audit – 12 July 2023
 - Percentage score – 25.46%
 - Total Number of actions set – 0
 - Outstanding actions – N/A
- **Children’s Services – Children, Young People and Families – Children’s Social Work and Initial Response Team**
 - Cancelled due to Ofsted inspection
- **Cann Bridge School**
 - Cancelled due to passing of staff member

Q3

- **Children Services – Education Participation and Skills – Virtual Schools and Inclusion**
 - Lead Auditor – Rod Urwin
 - Date of audit – 17 October 2023
 - Percentage score – N/A
 - Total Number of actions set – N/A
 - Outstanding actions – N/A
 - Incomplete following HSW staff member leaving PCC employment before completing Audit report.
- **Children Services – Education Participation and Skills – Skills and Post 16**
 - Lead Auditor – Scott Gallagher
 - Date of audit – 17 October 2023
 - Percentage score - 44.83%
 - Total Number of actions set – 37
 - Outstanding actions – 11 (2 x Low, 8 x Medium, 1 x High)
- **Millford Special School**
 - Lead Auditor – Scott Gallagher
 - Date of audit – 27 November 2023
 - Percentage score – 31.06%
 - Total Number of actions set – 8
 - Outstanding actions – N/A
- **Adult Health and Communities – Strategic Co-operative Commissioning**
 - Lead Auditor Scott Gallagher
 - Date of audit -9 January 2024
 - Percentage score - 54.76%
 - Total Number of actions set – 24
 - Outstanding actions – 6 (6 x Medium)

Q4

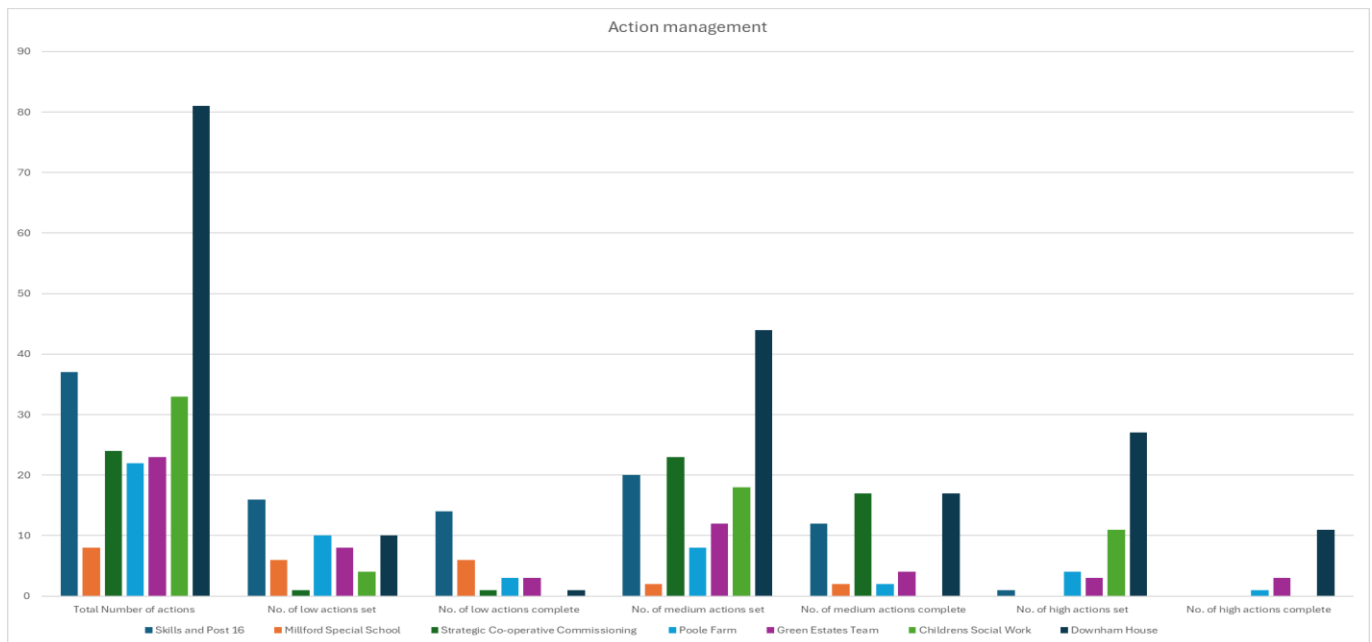
- **Brook Green Centre for Learning**
 - Lead Auditor - Scott Gallagher
 - Date of audit – 30 January 2024
 - Percentage score – 27.86%
 - Total Number of actions set – 0

- Outstanding actions - No actions set as there was no licence user within Brook Green Centre for Learning to allocate actions to. Sara Jordan (Head Teacher) developed own action plan from audit.
- **Place - Street Services – Environmental Planning – Natural Infrastructure Projects / Partnerships - Poole Farm**
 - Lead Auditor – Scott Gallagher
 - Date of audit – 12 February 2024
 - Percentage score – 37.92%
 - Total Number of actions set – 22
 - Outstanding actions – 17 (7 x Low, 6 x Medium, 3 x High)
- **Place - Street Services – Environmental Planning – Green Estates Team**
 - Lead Auditor – Scott Gallagher
 - 12 February 2024
 - Percentage score – 43.96%
 - Total Number of actions set – 23
 - Outstanding actions – 16 (5 x Low, 8 x Medium, 3 x High)
- **Children’s Services – Children, Young People and Families – Children’s Social Work**
 - Lead Auditor – Scott Gallagher
 - Date of audit – 16 April 2024 (extended past 31 March 2024 to ensure the correct time frame to upload and review required documents prior to site visit)
 - Percentage score – 57.69%
 - Total Number of actions set – 33
 - Outstanding actions – 33 (4 x Low, 18 x Medium, 11 x High)

HSW team undertook an informal audit of Downham House to assist with HSW operational requirements prior to re-opening.

- **Children Services – Education Participation and Skills – SEND - Downham House**
 - Lead Auditor – Shuan Badmin
 - Date of audit – 27 November 2023
 - Percentage score – 64.32%
 - Total Number of actions set – 81
 - Outstanding actions – 29 (1 x Low, 17 x Medium, 11 x High)

Audit Action Detailed Breakdown



Street Services Audits

These audits were undertaken by the HSW Advisor for Street Services in this reporting period. All audits have action plans which service areas are working through ahead of re-audit in the forthcoming year.

Service / Team Audited	Audit Outcome
Grounds Maintenance Service	Partially Compliant
Domestic Waste Service	Compliant
Fleet Services	Compliant
HWRC	Partially Compliant
LTP	Partially Compliant
Natural Infrastructure	Compliant
National Marine Park	Partially Compliant
Street Cleansing	Partially Compliant
Commercial Waste Service	Partially Compliant
Arborist Service	Partially Compliant
Waste Transfer Service	Partially Compliant
Poole Farm	Compliant
Environmental Planning	Partially Compliant

10.0 ENFORCEMENT ACTIVITY

Control of exposure to vibration

Following the prosecution of PCC by the HSE, relating to the improvement notice served in 2017 for Hand Arm Vibration, an action plan was implemented through Devon Audit Partnership (DAP) which has now been completed.

Current control measures are as follows (under constant review):

- Update to the LOLER HSPS 13 to include a section on equipment expiry / replacement with specific regard to HAVS.
- The investment of Reactec HAVwear.
- Equipment review is ongoing and continuous testing of the market of products such as electric machinery is being undertaken.
- Testing of all external HAVs equipment has been completed in Streets Services, Fleet Services and Bereavement Services and testing will be undertaken regularly through a 20% yearly testing programme with internal monitoring.
- Health surveillance is undertaken on all machinery users across all services.
- Specific task risk assessment and safe working operating procedures are in place and communicated to all relevant staff.

Chelson Meadow Enforcement Notice

Prohibition Notice was issued 17th February 2023 for structural stability of concrete push walls. These walls were removed immediately within 24 hours, and the facility closed. The walls have now been replaced.

Prince Rock Chemical Store Visit

A scheduled visit to Prince Rock to undertake a review of pesticide storage and usage. This visit was part of an ongoing HSE campaign. The site inspection was satisfactory, with no actions.

This is the end of the 2023-24 HSW Annual Report.

The next section (Appendix A) relates to the HSW Action Plan 2023-25:

The action plan contains actions that must be addressed corporately and at local level, with clear HSW leadership from DMT's and SLT's with strategic leadership, drive, challenge and ongoing monitoring through the HSW Steering group.

References

¹HSE (2021). Near-miss Book: Recording and reporting near misses at work. [online] www.hse.gov.uk. Available at: <https://www.hse.gov.uk/pubns/near-miss-book.htm>.

²Anon, (n.d.). Organisations: Breach of duty of employer towards employees and non-employees/ Breach of duty of self-employed to others/ Breach of Health and Safety regulations – Sentencing. [online] Available at: <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/organisations-breach-of-duty-of-employer-towards-employees-and-non-employees-breach-of-duty-of-self-employed-to-others-breach-of-health-and-safety-regulations/>

³Health and Safety Executive (2013). Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 - RIDDOR - HSE. [online] [Hse.gov.uk](http://www.hse.gov.uk). Available at: <https://www.hse.gov.uk/riddor/>

⁴Health and safety at work. (2023). Available at: <https://www.hse.gov.uk/statistics/assets/docs/hssh2223.pdf>

APPENDIX A: HSW ACTION PLAN 2023-25

							Update 14/11/23	Update 20/04/24	Update 18/06/24
Project Stages	Tasks	Start	Target Finish	Responsible Officer(s)	Stakeholders	Progress / Comments	Progress / Comments	Progress / Comments	
1	HSW Policy Development	Comprehensive review of current Health, Safety and Wellbeing Policy and draft produced	Sep-23	Nov-23	HoHSW		Draft completed and sent to HSW Team and ACE for comment	Complete	Complete
		Present initial draft policy to senior management for approval (following amendments, deletions etc) for consultation.	Dec-23	Dec-23	HoHSW	CMT	Complete	Complete	
		Present draft policy to Team Plymouth, Steering Group and Trade Unions for consultation	Dec-23	Jan-24	HoHSW	Team Plymouth, HSW Steering Group and Unions	Complete	Complete	
		Amend Policy following consultation	Jan-24	Jan-24	HoHSW	CMT and	Complete	Complete	
		Publish document and present to Council HSW Portfolio Holder	Jan-24	Jan-24	HoHSW	Council HSW Portfolio Holder	Complete	Complete	
2	SHE Assure System Embedded	Contract for system to be agreed (Licences for all managers and insights service pack)	Nov-23	Nov-23	HoHSW	HSW, ACE, Delt, Finance	Email to Pete Honeywell regarding progress with contract	Complete	
		Incident module licenced users trained	Nov-23	Sep-24	HoHSW	Managers		Training continues to be offered to all licenced users	Training continues to be offered to all licenced users

		Risk module roll out and training	Nov-23	Dec-24	HoHSW	Risk Assessors		Training continues to be offered to all users online, face to face, instruction guides, drop-in sessions	Training continues to be offered to all users online, face to face, instruction guides, drop-in sessions
		Full roll out of all modules and training (COSHH, audit and people). Include use of the cost function.	Nov-23	Apr-24	HoHSW	All PCC		COSHH Module rolled out, training and support from HSW Team to assessors. Audit module fully rolled out. People module partially used - still awaiting module approval from GDPR Lead	COSHH Module rolled out, training and support from HSW Team to assessors. Audit module fully rolled out. People module partially used - still awaiting module approval from GDPR Lead
		Managers Toolkit on SHE Assure and other management checklists and tools)	Nov-23	Apr-24	HoHSW	Managers		Managers toolkit currently in excel format. Full migration of Managers Toolkit cannot be completed until GDPR approval of	Managers toolkit currently in excel format. Full migration of Managers Toolkit cannot be completed until GDPR approval of

								people module	people module	
3	HSW Steering Group	Terms of Ref, membership review	Nov-23	Nov-23			Draft produced - consultation with HSW Team	Complete	Complete	
		HoHSW meet with all attendees to discuss purpose of Steering Group and Managers Toolkit	Nov-23	Dec-23			Complete	Complete		
		First Steering Group Meeting	Jan-24	Jan-24	HoHSW	Steering Group Membership	Complete	Complete		
		Planned quarterly meetings	Jan-24	Jan-24	HoHSW	Steering Group Membership	Complete	Complete		
4	HSW Risk Management integrated with Corporate Risk and Opportunities Strategy (escalation, tolerance etc)	Discussion with Risk Manager	Oct-23	Oct-23	HoHSW	Risk Management, CMT	Met with Ross Jago, discussion of how further integration can be facilitated	Complete		
		Review of Corporate Risk and Opportunities Strategy to incorporate HSW risk management	Oct-23	Nov-23	Risk Manager and HoHSW	Risk Management, CMT	Reviewed, presented to CMT and approved. Published on staffroom now	Complete		
		Investigate the potential use of SHE Assure for Corporate Risk Register	Nov-23	Feb-24	HoHSW and Risk Manager	Risk Management and SHE	Microsoft solution in place now for corporate risk register	Complete		
5	Integration of Wellbeing	Include Wellbeing in HSW Policy	Nov-23	Nov-23	HoHSW		Complete	Complete		Complete

		Recruit to Health and Wellbeing Advisor Post (in HSW Department)	Oct-23	Mar-24	HoHSW	Recruitment	Role profile amended and sent to grading. Returned with grade approved. Recruitment to advertise ASAP. Emailed again 15/11/23	Appointed and starts in post 17/4/24	Complete
		Development of Wellbeing Action Plan including Wellbeing at Work & #OurStaff	Mar-24	Jul-24	H&W Advisor	Wellbeing Champions, HSW Team, HROD, Unions, HSW Steering Group, H&W Committee			Wellbeing action plan under development - will be consulted through Steering Group
6	Development of Standard Assurance Report for CMT and Audit and Governance Committee	KPI development for all HSW Areas	Nov-23	Sep-24	HoHSW	OH, EAP, HROD	KPI's are being developed for all HSW areas	All HSPS's being reviewed and updated to include standard KPI's	All HSPS's being reviewed and updated to include standard KPI's
		Recruitment of HSW Assistant to focus on HSW data and compliance reporting	Nov-23	Apr-24	HoHSW		Role profile amended and sent to grading. Returned with grade approved. Recruitment to advertise ASAP. Emailed again 15/11/23	Appointed	KPI Compliance Dashboard under development

		SHE Assure system to be configured to automate KPI dashboard reporting	Nov-23	Apr-25	HoHSW	SHE Assure, CMT			KPI Compliance Dashboard under development - once people module has been approved by GDPR manager, information related to role-specific training, assessment can be drawn from Assure. Currently reliant on HROD input for training data - data held is not complete as only captures mandatory and some role-specific data
7	Training matrix development through SHE Assure	People module to be configured	Nov-23	Jan-24	HoHSW	GDPR, HROD	People module already purchased - meeting to be booked with SHE and GDPR to discuss info security	Awaiting GDPR Security approval for people module. First planned meeting was not attended by relevant stakeholders.	Awaiting GDPR Security approval for people module and HR system integration

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8	HSW Strategy Development	Development of draft strategy for consultation	Mar-24	Dec-24	HoHSW	HSW Team			
		Consultation of Strategy	Apr-24	Apr-24	HoHSW	HSW Team, CMT, HSW Steering Group, HSW Coordinators, Unions			
		Action Plan development	May-24	Apr-24	HoHSW	HSW Steering Group			
		Publish Strategy and present to Portfolio Holder	May-24	Apr-24	HoHSW	Portfolio Holder, ACE, CMT, All Staff			
		Monitor Action Plan through HSW Steering Group	May-24	Ongoing	HoHSW	HSW Steering Group			
9	Fire Safety Policy review and associated arrangements	Review of Fire Safety Policy	Jan-24	Sep-24	HoHSW	Facilities Management			Hard FM Operational Manager now in post and this will be a priority for review
		Review of associated arrangements (including current PIC arrangements): <ul style="list-style-type: none"> - Competent Fire Safety Advice - Fire Marshals - Fire Risk Assessment and review - Fire passive and active mitigation management - Fire evacuation drills - PEEPS arrangements - Decommissioning process for detector heads during refurb / construction - Training 	Jan-24	Sep-24	Hard FM Service Manager	Facilities Management			Hard FM Operational Manager now in post and this will be a priority for review

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10	Emergency HSW Arrangements	Review and test all emergency HSW arrangements across all sites e.g. Fire, Gas, Security, Explosive Devices and Explosive Atmospheres, Terrorism, Flooding, Work with Water, Confined Space, LOLER	Jan-24	Apr-25	HoHSW	All sites			Identification of emergency procedures requiring testing through review of HSPS's - ongoing
11	Statutory Building Compliance Requirements	Review of statutory building compliance requirements	Jun-24	Dec-24	Hard FM Service Manager	All sites			
		Review of competencies required for compliance activities	Jun-24	Dec-24	Hard FM Service Manager	All sites			
		Define process for compliance monitoring, audit, assurance and reporting	Jun-24	Dec-24	Hard FM Service Manager	All sites			

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Audit and Governance Committee



Date of meeting:	10 September 2024
Title of Report:	Family of Companies Governance Framework
Lead Strategic Director:	Tracey Lee (Chief Executive)
Author:	Liz Bryant, Monitoring Officer
Contact Email:	liz.bryant@plymouth.gov.uk
Your Reference:	
Key Decision:	No
Confidentiality:	Part I - Official

Purpose of Report

Following a review by the Monitoring Officer of the Family of Companies governance arrangements, a number of recommendations have been made to improve the governance and transparency of the Council's suite of companies.

The recommended measures are intended to ensure that:

- Family of company procedures operate in a way that protects the commercial interests of the each of the companies while ensuring that that the Council can carry out its functions as an investor, as a trustee of public funds and as a Council committed to exercising its functions responsibly;
- The Family of Companies are managed in a way that seeks to avoid and/or mitigate exposure to unnecessary financial risk or to unexpected financial outlays.
- Roles and responsibilities of all parties connected with the Family of Companies are clearly defined, that conflicts of interests are managed, and clear decision-making processes should be in place.

Recommendations and Reasons

The Audit and Governance committee:

1. Recommends the establishment of a Shareholder Committee or Committees and who should sit on those committees; noting the Terms of Reference for the Committee at Appendix B.

A Shareholder Committee or committees set up for specific companies are required to receive reports in relation to the Family of Companies, in particular from the Shareholder Representative for each company. The committee/s would become the primary decision-making body in relation to the Family of Companies on behalf of the Council.

2. Notes the establishment of a Shareholder Officer Group consisting of nominated Shareholder Representatives for each company who will meet at least twice annually or as required and will work to the draft Terms of Reference at Appendix C.

The Group will provide shareholder and statutory officer oversight of the Family of Companies. This will allow the Council to manage the companies as a Group, ensuring it provides strategic direction, monitors performance as well as providing advice arising from the Shareholder role to the Shareholder Committee or Leader.

3. Recommends the implementation of a programme of training for Directors, Members and Shareholder Representatives the arrangements for which are delegated to the Monitoring Officer.

Each of the above have important and distinct roles to place in the governance of Council-owned Companies. The Council should therefore ensure that they are provided with sufficient training on an ongoing basis so that they understand their role in relation to Family of Company governance.

4. Note that conflicts of interest are managed by ensuring that Directors are selected to avoid any conflict with the role they undertake on behalf of the Council and the Conflicts of Interest Guidance at Appendix D is adopted to support this.

It is essential that company directors are in a position to act in the best interests of the company, this means that any member or officer exercising a shareholder role, or Service Directors whose areas of responsibility relates the objectives of the company should not be appointed as Directors.

5. Recommends:

a) the Monitoring Officer adds an appendix to the Constitution setting out the Governance Framework for the Family of Companies as per the draft at Appendix E of this report.

b) the Monitoring Officer in consultation with the Leader makes the amendments required to the Scheme of Delegation to ensure that executive decisions taken on behalf of the Council as shareholder are delegated to the Shareholder Committee or the Leader.

At present, there are no explicit delegations to the executive or officers in the Scheme of Delegated. There should be a move away from relying on delegations on a case by case basis as the companies are set up or changes are required, as this leads to lack of transparency and no clear mechanism for company record and information storing.

6. Recommends that Overview Scrutiny and Management Committee are engaged in the process of reviewing the Council's corporate interests. This should include annual overviews as well as the review of any decisions taken by the Shareholder Committee which have a material impact on the Council as shareholder.

OSMC should provide overview, pre-decision scrutiny and call-in of decisions regarding the council's shareholding interest in its entities. This ensures that executive shareholder decision making is taken in the best interests of the Council as well keeping under review the social and financial objectives of each company

Alternative options considered and rejected

No alternative options have been considered. The recommendations are in line with the Codes of Practice published by CIPFA, Lawyers in Local Government, and Local Partnerships. They are also in accordance with CIPFA recommendations.

Relevance to the Corporate Plan and/or the Plymouth Plan

The recommendations support the Council's commitment to take responsibility for its decisions and actions, to act democratically by ensuring the correct decision makes are involved with the corporate governance of the Family of Companies and to foster a spirit of co-operation by working providing clear lines of governance for working with partner organisations.

Implications for the Medium Term Financial Plan and Resource Implications:

Financial resources will be required in relation to the training of directors, officers and members in the requirements of their individual roles in respect of the Family of Companies.

Financial Risks

Council owned companies are legal entities and carry financial risk in their own right. The Council therefore needs to ensure that the financial risk posed by each company is effectively managed and mitigated through robust corporate governance arrangements.

Carbon Footprint (Environmental) Implications:

Effective oversight of the management and governance of the Family of Companies will ensure that carbon footprint implications are considered by the Council as shareholder in relation to each company.

Other Implications: e.g. Health and Safety, Risk Management, Child Poverty:

** When considering these proposals members have a responsibility to ensure they give due regard to the Council's duty to promote equality of opportunity, eliminate unlawful discrimination and promote good relations between people who share protected characteristics under the Equalities Act and those who do not.*

Effective governance is required to ensure that health and safety measures are considered for the running of each company and that the risks that each pose are effectively monitored and managed.

Appendices

**Add rows as required to box below*

Ref.	Title of Appendix	Exemption Paragraph Number (if applicable)						
		<i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</i>						
		1	2	3	4	5	6	7
A	Briefing report title							
B	Shareholder Committee ToR							
C	Shareholder Officer Group ToR							
D	Conflicts of Interest Policy							
E	Constitution Appendix 5							

Background papers:

*Add rows as required to box below

Please list all unpublished, background papers relevant to the decision in the table below. Background papers are unpublished works, relied on to a material extent in preparing the report, which disclose facts or matters on which the report or an important part of the work is based.

Title of any background paper(s)	Exemption Paragraph Number (if applicable)						
	If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.						
	1	2	3	4	5	6	7

Sign off:

Fin	DJN. 24.2 5.07 9	Leg	LS/00 0036 09/17 /LB/0 4/09/ 24	Mon Off		HR		Asset s		Strat Proc	
Originating Senior Leadership Team member: Tracey Lee (Chief Executive)											
Please confirm the Strategic Director(s) has agreed the report? Yes											
03/09/2024											

FAMILY OF COMPANIES CORPORATE GOVERNANCE FRAMEWORK



1. BACKGROUND

Plymouth City Council's Family of Companies (FoC) consists of 20 companies, which operate for varying purposes. The Council has various statutory powers to enable it to set up a company or companies, which may take various forms. Whilst this report refers to Council-owned Companies the governance arrangements apply equally to any vehicle the Council may incorporate or otherwise establish under its statutory powers.

The provisions described in this report apply to the existing Family of Companies and any similar vehicles that the Council sets up or in which it decides to participate. Any Council-owned Company must be managed effectively, and the Council must ensure that it delivers the objectives for which it was established. There must also be transparent and robust governance in place for any Council-owned Company so that the Council has effective and appropriate oversight of its activities.

Council-owned companies are generally established where it can be demonstrated that the new entity has the capacity to deliver financial savings with limited financial outlay and minimal exposure to risk.

2. EFFECTIVE CORPORATE GOVERNANCE

Corporate governance of the Family of Companies should:

- involve a set of relationships between a company's management, its board, its shareholders and other stakeholders;
- provide the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance;
- provide the company with sufficient freedoms to achieve its objectives; and
- ensure that the Council retains sufficient controls to ensure that its investment is protected, that appropriate social and financial returns on investment can be obtained and that the trading activities of the companies are conducted in accordance with the values of the Council.

The Council-owned companies, however established should adhere to the same principles of governance and controls over conduct as the Council itself. The objective in implementing effective governance is to achieve a successful company which works alongside the Council in delivering joint objectives. The Council must consider how to balance the need to assist the company to achieve its trading objectives within the principles of transparency, accountability and probity.

3. RECOMMENDATIONS AND REASONS

3.1 Decision Making and the Shareholder Committee/s

The rights and duties as a member of the company will generally be exercised as an executive responsibility. This means that decisions to be taken by the Council as a member of the company (as shareholder) fall to be decided on by the Leader or may be delegated to a cabinet member or officer. These decisions will be subject to key decision processes and access to information rules, call-in and review by overview and scrutiny committee.

The Council's constitution should make provision for this decision-making process and the relevant delegations. It is recommended that the Monitoring Officer makes the appropriate amendments to the Scheme of Delegation following finalisation of the recommendations contained within this report and that the document included at Appendix E is appended to the Constitution to formalise the governance processes for the Family of Companies.

Decisions taken by the executive are "reserved matters", as opposed to decisions which are left to the company to be made by the Board. They include such matters as appointment of directors, approval of the company's business plan and certain financial matters. They should be described in either a shareholder agreement or the company's Articles of Association. In practical terms this means that either the Leader or the person delegated to take decisions on reserved matters will be present at Board meetings to vote on such matters. It is this role which can give rise to conflicts of interest if the Directors of the company are not carefully selected to ensure that are entirely separate from the shareholder representative.

There should be clarity regarding the role of shareholder, with reserved matters clearly documented and updated as required, reflecting any changes made as the Company has developed, in the shareholder's agreement, or the company's governing articles of association. If there is only one shareholder a shareholder agreement may not be necessary, however, it is essential that an agreement is documented as to which decisions are to be taken by the Board of the company without the approval of the shareholder and which will be reserved matters which will require shareholder approval.

The executive shareholder responsibility may be delegated to a committee, or committees depending on the number of companies and the size and complexity of each company, rather than to an individual. If this is the case, there must be a Terms of Reference drawn up and a suitable number of elected members identified to sit on the committee. This report recommends the establishment of at least one Shareholder Committee to undertake the shareholder role as described above on behalf of the Leader. An other consideration is whether the larger more operational companies, such as Delt, Plymouth Active Leisure and CaterEd have their own committees due to larger volume for work that may be required by these companies.

Because the role of shareholder is an executive function, it is normal for Cabinet members to be appointed to Shareholder Committees. However, the Leader may delegate his shareholder function to members as he sees appropriate. The Committee may be made up as follows:

- i. The Leader or alternative executive member;
- ii. Such other members appointed by the Leader (at least two);
- iii. The Service Director for Finance (s151 Officer) (or deputy)
- iv. The Monitoring Officer (or deputy)

Draft Terms of Reference for the Shareholder Committee are included with this report at Appendix B

3.3. The Shareholder Representative

The council must have a designated “shareholder” to represent and protect its ownership of each of the Family of Companies. Although the Leader is designated as the Council’s Shareholder this role may be delegated to Officers as the Leader sees fit for each of the Family of Companies. The process for appointing a shareholder representative should be set out in the Council’s constitution which should also detail how the shareholder reports on the exercise of their delegated powers.

It is recommended that for each Council-owned Company the Council will appoint a shareholder representative who will have sufficient experience, skills and capacity to be able to discharge their duties effectively and will have no actual or potential conflict of interests. For example, they will not be in a client role relating to the services provided by the Company, nor have any responsibilities for the Council as lender. The shareholder representative is intended to operate as a conduit between the Council and the Company.

A Shareholder Officer Group is in the process of being established which will consist of the Shareholder representatives for each company, along with the Council’s Section 151 Officer, the Monitoring Officer and any other officers as considered appropriate. Draft Terms of Reference and a Shareholder Representative Role profile have been drafted for consideration at the first meeting of the Shareholder Officer Group on 9 September 2024. The draft Terms of Reference are included at Appendix B.

The main purposes of the Shareholder Officer Group will be:

- Acting as the custodian of the Shareholder’s interests in the Company;
- Establishing with the Shareholder Committee the outcomes that the Council requires of its Family of Companies, and testing the group entities against these;
- Building and maintaining an effective and transparent relationship between the Shareholder and the Company;
- Ensuring each Company has the right level of challenge and support from the Shareholder;
- Establishing and maintaining a group environment and culture for the Family of Companies;
- Preparing, gaining approval, and implementing a commercial strategy for the Family of Companies.

3.4 Appointment of Directors and Conflicts of Interest

The company’s board of directors is answerable to the Shareholder/s, in accordance with the company’s Articles of Association. It is recommended that each company board should consist of between 3 and 8 directors, according to practicalities and dependent on the circumstances of each company. The Council should be represented on the board of each of its companies.

Given the nature of their roles, and the likelihood of conflicts of interest, certain officer and councillor positions should not be appointed as directors:

These include:

- Statutory Officers
- Cabinet Members whose portfolio relates to the aims of the company
- Corporate and Service Directors whose service areas relate to the aims of the company
- Any elected member appointed to the Shareholder Committee if established
- Officers appointed to the Shareholder Group/Board

The process for the appointment and renewal of directors should be set out in the Articles of Association for each company, which should state those appointments which are wholly reserved to the Council.

Appointments should be based on a review of the skills, qualifications, diversity, and other attributes required for the role. A Director Role Profile has been drafted and will be used to create a pipeline of Directors by inviting expressions of interest from a pool of officers who wish to undertake the role as a development opportunity. This recruitment process will be undertaken by the Director of HR and OD and the Monitoring Officer.

Those who are appointed directors will participate directly in the activities of the company, are answerable to the company and have the powers and duties of company directors whilst they do so. Accordingly, this requirement in a company and the accompanying conflict of interests that may arise means that officers are better placed to fulfil this role.

It should therefore be the norm that officers, not members, are appointed as directors, but this does not prevent the Council from appointing members as directors where that is considered to be in the best interests of the company and the Council, for example, based on the skills and expertise of the particular member. If members of the Council are appointed as directors of a company, the following should be considered:

- conflicts of interest may be waived by a company but, never in the decision making of the Council;
- the Council Member / company director will always have a conflict of interest when it comes to their role as a councillor that must be resolved and resolved in the favour of the company;
- a Member, as director, therefore, must not be a party to making a decision of the Council affecting the company, but may provide evidence or advice to the Council on the company's behalf when invited to do so;
- The Councillor Code of Conduct applies to a Member's activity as a director, except only where it directly conflicts with the interests of the company and, where that may be the case, the potential conflict should be notified to the company secretary and to the Council's monitoring officer;
- The only monies or other remuneration to be received by the Member in connection with the directorship will be as a special responsibility allowance (SRA) given by the Council.

All directors should receive training in technical and corporate governance matters, including, managing conflicts of interest alongside ensuring that the board functions effectively. (See 3.5 below).

Appointments of a Council officer as a company director will be made on basis of the relevant post or office of the Council, not as an individual. This should be reflected within each of the companies' articles in that if any one of the Council appointed directors ceases to be an employee, office holder or Member of the Council, as applicable, then they automatically also cease to be a director of the company. For this reason, the officer director will be remunerated by the Council not the Company.

A Conflict of Interests Policy has been drafted to support Directors and Shareholders and this is included with this report at Appendix D.

3.5 Training for Members and Officers

Governance arrangements should seek to ensure that there is sufficient induction, training and other materials in place so that members of the Council in their role as part of the executive or of overview and scrutiny, officers of the Council associated with these duties and all directors of the companies understand:

- their legal duties;
- stewardship of assets;
- the provisions of the governing documents;
- how to ensure that the Board functions effectively;
- the external environment; and
- the total structure of the organisations and the venture being undertaken.

It is essential that existing and prospective Company board members are competent and have sufficient knowledge to undertake the role. The role profile for Directors supports those appointed in developing an understanding of their legal duties, however all Directors/prospective Directors will be expected to undertake training and assessment to a suitable standard. The recommended standard is that of the Institute of Directors' Competency Framework and there are number of organisations who can provide such training, including CIPFA.

It is recommended that the Shareholder Officer Group plays a role in organising suitable training for all of those involved with the Family of Companies and maintains a review of training requirements going forward.

It is good practice for the Council to liaise with the Chair of the board of each of the companies to determine what skills and expertise would best serve the board and the company. Again this is a role that could be undertaken by the Shareholder Officer Group.

3.6 Scrutiny of the Shareholder Function

It is recommended that the Overview Scrutiny and Management Committee is responsible for the scrutiny of executive decisions in relation to the Family of Companies. This would effectively mean that OSMC would scrutinise the work of the Shareholder Committee and its decisions, or those of the Leader where he has taken decisions directly. It would be for OSMC to make recommendations to the Shareholder Committee on Family of Company matters. It may be that OSMC can invite Family of Company representatives to attend meetings to provide information to support the scrutiny of the executive shareholder function in relation to each company. This would not extend to the scrutiny of the Council-owned company itself and its performance.

A Family of Companies Governance Framework document is in the process of being drafted and will be finalised once the matters set out in this report have been confirmed. This document will be a guidance document for all those involved with the Family of Companies and will be reviewed on an annual basis by the Shareholder Officer Group to ensure that it remains relevant.

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FAMILY OF COMPANIES

Appendix B

Draft Shareholder Committee Terms of Reference

**PLYMOUTH SHAREHOLDER COMMITTEE
TERMS OF REFERENCE (DRAFT)****1. OVERVIEW**

- 1.1 The Shareholder Committee forms part of the overall governance arrangements for Plymouth City Council ("the Council") in relation to companies and other legal entities which are wholly or partly owned or controlled by the Council (including where such control comes about indirectly, such as via a loan agreement) (each a "Subsidiary" and together the "Subsidiaries").

2. CONSTITUTION

- 2.1 The members of the Shareholder Committee will be set to 4 Cabinet Members to be nominated by Cabinet.
- 2.2 Each Shareholder Committee member may nominate an alternate Cabinet Member to attend a meeting in their place.
- 2.3 The Shareholder Committee will be supported by Council officers as required.
- 2.4 The Shareholder Committee will appoint a Chair of the Shareholder Committee. If an appointed Chair is not present at the start of a meeting of the Shareholder Committee, those members present will appoint one of the members present to chair that meeting.
- 2.5 Additional advisors, who do not need to be officers or members of the Council, may be invited to attend the Shareholder Committee as required.

3. ROLE OF THE SHAREHOLDER COMMITTEE

- 3.1 The Shareholder Committee will have a role in ensuring proper governance of the Council's Subsidiaries, such role to include:
- 3.1.1 monitoring information from each Subsidiary, in particular on financial and other risks and escalating such risks within the Council as appropriate;
- 3.1.2 exercising decisions relating to the Council's role as shareholder, member, owner, lender, or other position of significant control over the Subsidiary, where those decisions have been delegated to the Shareholder Committee;
- 3.1.3 making reports and recommendations to the Cabinet on areas outside of the Shareholder Committee's delegated authority;
- 3.1.4 agreeing and entering into a Memorandum of Agreement (see 3.2 below) with each of the Council's Subsidiaries;
- 3.1.5 the necessary oversight, from a shareholder's perspective, that the parameters, policies, and boundaries, that the council has established are being adhered to including a regular review of whether the Subsidiary provides the most effective vehicle to deliver the outcomes it requires and whether there are viable alternative models which might offer a more effective means of delivering its priorities;

- 3.1.6 an articulation of what success looks like in terms of delivery models to meet objectives such as achieving social outcomes and/or a return on investment;
 - 3.1.7 agree a mechanism to communicate the shareholder's views to the Subsidiary by effecting systematic engagement between the Chair and shareholder role to assure effective performance against strategy and governance;
 - 3.1.8 provide a holistic review of risk to the Council offered by all active Subsidiaries;
 - 3.1.9 consider and advise on the duties and if any, the training needs of potential Directors to allow them to competently assume this role;
 - 3.1.10 making representations to the Directors on the Business Plans of the Subsidiary Companies or other organisations set out in this report;
 - 3.1.11 receiving reports from the Directors where appropriate, on the progress and conduct of business in accordance with the approved Business Plan;
 - 3.1.12 reporting to the Cabinet on the performance of the Subsidiary Companies;
 - 3.1.13 undertaking due diligence on the various Subsidiary Companies to ensure liabilities are known and accounted for within the Council;
 - 3.1.14 deciding whether a particular Subsidiary needs to be under the oversight of a specific service area;
 - 3.1.15 in the case of forming a new Subsidiary, the committee will first scrutinise the business case for forming the Subsidiary to clarify the service components to be delivered, outcomes sought and options for how these may be delivered and undergo an effective comparison of alternative delivery models to ensure that the objectives, timescales, and drivers of forming the Subsidiary is the optimum approach and an advisory paper will be submitted to Cabinet for a decision.
- 3.2 It is expected that each Subsidiary will enter into a form of agreement with the Council (whether as owner, controller or lender) setting out the basis of the relationship between them (each a "Memorandum of Agreement").
- 3.3 A detailed description of the Shareholder Committee's role in relation to each Subsidiary will be set out in the relevant Memorandum of Agreement.
- 3.4 Authority to make decisions on behalf of the Council is delegated to the Shareholder Committee for each Subsidiary as follows:
- 3.4.1 The following decisions are delegated to the Shareholder Committee for all Subsidiaries:
 - Approval of Memorandum of Agreement with each Subsidiary
 - Approval of annual Business Plan and deviations from Business Plan
 - Approval of key appointments (including appointment, removal and or replacement of Directors)
 - Borrowing money, granting security and giving of guarantees
 - Winding up of Subsidiary
 - Altering in any respect the articles of association of a Subsidiary
 - Altering the rights attaching to any of the shares in a Subsidiary
 - Permitting the registration of any person as a shareholder or member of a Subsidiary
 - Nominating any directors to be appointed on the board of a Subsidiary and notifying a Subsidiary to remove directors from its board
 - Increasing the amount of a Subsidiary's issued share capital

- Passing any resolution for a Subsidiary's winding up or presenting any petition for its administration
- Altering the name of any Subsidiary
- Adopting, reviewing or amending a Subsidiary's Business Plan
- Where a Subsidiary fails to produce a Business Plan as required by its Memorandum of Agreement, commissioning that Subsidiary's Business Plan
- Directing the board of a Subsidiary to take or to refrain from taking a particular action

3.4.2 Any Memorandum of Agreement entered into with a Subsidiary may identify additional decisions which are delegated by Cabinet to the Shareholder Committee in relation to that Subsidiary only.

3.5 Decisions which are not delegated to the Shareholder Committee in accordance with 3.4 above will be taken through the usual decision-making processes in accordance with the Council's governance and constitutional framework. This will include decisions relating to the issue of loan capital in relation to any Subsidiary and to any approvals relating to any intra-group loans.

4. OPERATION OF THE SHAREHOLDER COMMITTEE

4.1 The Shareholder Committee will meet [three] times per year, or more frequently if required.

4.2 The quorum for a meeting of the Shareholder Committee is a minimum of 3 members.

4.3 Meetings will be held in public or otherwise in line with the Council's democratic meeting protocol. There may be particular matters or agenda items which are required to be considered in private due to commercial confidentiality, and these will be handled in accordance with the Council's usual democratic protocol.

4.4 Minutes and agendas will be managed and published in accordance with the Council's usual democratic protocol.

4.5 The Shareholder Committee shall make its decisions as follows:

4.5.1 At meetings of its members by consensus of those present, unless any member of the Shareholder Committee requires a vote, in which event a majority decision will be taken with each member of the Shareholder Committee present having a single vote. Advisors and officers present to support the Shareholder Committee will not have a vote. The Chair of the meeting has a casting vote in the event that there is no clear majority; or

4.5.2 In cases of urgency, by a decision made by the Leader or by an alternate Cabinet Member nominated by the Leader in consultation with the Chief Executive;

4.6 After each meeting, the Chair shall approve the minutes and authorise the implementation of the Shareholder Committee's decisions, including where relevant the signature of any documents by appropriate Council signatories.

4.7 The Shareholder Committee will review the Terms of Reference annually and make any necessary recommendations to Cabinet.

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FAMILY OF COMPANIES

Shareholder Officer Group Terms of Reference



Background

The Council owns a number of companies including some in which it has 100% shareholding. In order to manage the portfolio of companies a Shareholder Officer Group is required to provide a more sustainable approach to governance. This will allow the Council to manage the companies as a Group, ensuring it provides strategic direction, monitors performance and provides each entity with the commercial freedom to maximise their chances of success.

Aim of the Group

The aim of the Group is to provide shareholder and statutory officer oversight of the Council's family of companies and to provide advice to the Leader/Shareholder Committee arising from the exercise of the shareholder role when representing the Council as a shareholder of Council owned companies, including providing feedback from company board meetings.

Decision Making

The Group may formulate recommendations for the Leader/Shareholder Committee to take decisions concerning the Council's shareholding or membership of Companies, both present and future, in accordance with the Leaders Scheme of Delegation. The Group has no decision-making powers.

Functions

The functions of the Shareholder Group are to advise the Shareholder Committee/Leader in relation to:

- a) the matters reserved to the Council (Reserved Matters) pursuant to the Shareholders' Agreement and articles of association;
- b) any other responsibilities pursuant to the Shareholders' Agreement, including considering any variations proposed in relation to it; and
- c) any matters on which the Leader must act or reflect which arise as a result of the Council being a shareholder of the Council Companies, including but not limited to:
 - i. monitoring the performance of the Council Companies (including in relation to their Business Plans);
 - ii. overseeing the strategic direction of the Council Companies;
 - iii. considering the risks and opportunities faced by the Council Companies and their impact on the Council (including, for example, in relation to commercial factors, governance issues, and health and safety records);
 - iv. reviewing the extent to which the Council Companies are delivering social value and maximising this where possible;
 - v. ensuring that the company's status as a 'Teckal' company is maintained, where relevant.
 - vi. Replacement/Appointment of Directors

Each Shareholder Group member should read and understand the following documents which set out the shareholder function:

- (a) Shareholders' Agreement (if applicable);
- (b) Scheme of Delegations;
- (c) Articles of association of each Council Company;
- (d) The Governance of Council Interests in Companies – A Code of Practice.

The Shareholder Group shall also advise the Shareholder Committee/Leader, upon request, in relation to any other companies that the Council has a direct or indirect interest in.

Any recommendations made by the Shareholder Group in respect of any Council Company which give rise to a decision of the Shareholder Committee or Leader must be notified to the board of directors of the relevant company as soon as is reasonably practicable.

Membership of the Board

The Shareholder Board shall consist of:

- a) the nominated officer Shareholder representative for each company; and
- b) The Council's S151 Officer (or their delegate), Monitoring Officer (or their delegate), and where appropriate the Governance Manager and such other officers as requested from time to time.

Quorum

The nominated shareholder for each Company (as per Appendix I attached) or their representative and the statutory officers or their delegates.

Objectives of the Group

- To provide advice and recommendations to the Cabinet, Leader and/or Shareholder Committee as appropriate on any proposals for new company formations, prior to any formal decision to establish the entity.
- To advise the Shareholder Committee or the Leader in line with the requirements of the Leader's Scheme of delegation or in such other circumstances as the Leader feels appropriate on any decisions required of the Council as a shareholder/member of a company.
- To monitor the overall legal and governance framework for the family of companies and make recommendations to the Shareholder Committee or the Leader where there are any issues which require a decision.
- To consider the strategic/business plans of each of the Council's main companies in order to both promote understanding (and constructive challenge of) strategic direction and enable stronger advocacy of the companies by elected members.
- To monitor the performance of a company in relation to its Business Plan and, in particular, the company's performance:
 - in financial matters

- against the social goals of the company as set out in the company's Objects, Business Case or Business Plan; and
- against the values of the Council
- To evaluate and monitor:
 - (a) the financial and social returns on investment (be that shareholding, loans or direct investment); and
 - (b) risks and opportunities including those arising from joint ventures or new opportunities.
- To consider the annual accounts of each of the Council's main companies and set expectations about the financial return to the Council (where relevant and noting that dividend recommendations come from the Board of Directors).
- To promote stronger working relationships between elected-members and the senior officers/boards of each company.
- Oversee reporting on the companies as part of their annual governance statement to give a full picture of our relationship with those bodies.
- Look to ensure the companies abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.
- Consider matters reserved to the Council for shareholder approval, such as:
 - (a) Varying Articles of Association
 - (b) Varying ownership and structure
 - (c) Variations to shares (number of, rights, etc.)
 - (d) Entering contracts that:
 - (i) have a material effect on Council business (including other companies within the Board)
 - (ii) are outside of the business plan or do not relate to the business
 - (iii) significant in relation to the size of the business, the business plan, etc.
 - (e) Material legal proceedings outside of ordinary business
 - (f) Adopting and amending business plans each year and strategic plans (3 years)
 - (g) Appointment, removal and the remuneration of directors (members of the company board)
 - (h) Selection of the chair of the board
 - (i) Appointment of auditors
 - (j) Issue of dividends as more particularly set out in a company's Articles of Association or Shareholder Agreement.

Accountability

The Group is accountable to the Leader/Shareholder Committee and Cabinet. For clarity, it is an advisory body only and has no decision-making powers.

Frequency of meetings

The Board will meet up to four times a year on a basis established by the Group at its first meeting to review the financial and strategic position of the companies, and to be updated on business

development opportunities. It will meet as needed as matters arise which fall into the remit of the Group.

Meetings may be convened in a physical location, or by telephone call or Teams.

Invited Attendees

By specific invite the following may attend meetings of the Board:

- Chair of the relevant Overview and Scrutiny Committee
- Any Chief Executive, Board Chairman, Chief Financial Officer, Company Secretary or Director of any of the companies of the Council.
- Any other joint shareholders, or their representative, of any jointly owned/controlled company.

Advisors

The Strategic Director for Finance (s151 officer) and the Head of Legal Services (Monitoring Officer), or their deputies, will be advisors to the Board to provide open and strong advice.

Conflicts of Interest Guidance for member and officers

This is a practical guide for officers and councillors who may have a role in connection with the Council's Family of Companies. It helps them – and the Council itself - to recognise the interests involved and to avoid a conflict between them.

The guidance helps sets out:

- A. Why this guidance matters
- B. Recognising the different roles
- C. Avoiding the problem – the appointment of directors
- D. Recognising the interests involved
- E. Behaviours, codes of conduct and responsibilities
- F. Handling conflicts of interest

Annex – further information

A. Why this guidance matters

“Being a director of a local authority-controlled company requires officers and elected members appointed to those roles to operate in a completely different legal and philosophical framework to that which they are used to as part of their local authority. This can lead to real conflicts between the duty owed the company and the interests of your council.

It can also lead to conflicts of interest at a personal level which makes holding some roles in a local authority unviable whilst continuing as a director. It is necessary to make different assumptions about how things operate and what issues you need to have demonstrated you have taken into account, and what had no influence.

Too often, this is not understood until problems arise, resulting in reputational and financial damage and in some cases, external intervention directly impacting on your authority.”

Max Caller, Strategic Adviser and Lead Inspector for HM Government, ‘Local Authority Company Review Guidance’.

B. Recognising the roles

Officers and councillors can be appointed as directors of the Council's companies. It is essential at the outset, for the Council to be clear on the roles that they intend the officer or councillor will continue to have within the authority; and how this differs from the role of director of the company.

Officer of the council: the first duty of an officer of the Council is to the Council itself, using their knowledge and professional expertise, and the council's information and resources, to give advice, make decisions under delegation, and to deploy line management reports generally to deliver the Council's objectives.

Member of the council: a member of the Council is democratically elected to represent their communities and may be appointed to formal roles or bodies within the decision-making structure, to make decisions and to shape policy on behalf of the Council. Such roles may involve executive decision making or scrutiny or oversight of the council of other bodies.

Director of a company: a director's first duty is to the interests of the company not to the Council. The Institute of Directors' *Corporate Governance Guidance and Principles* states: "an important principle of company law is that directors have a duty to promote the success of the company as a whole. They are specifically prohibited from directing the activities of the company in favour of themselves or particular shareholders and/or stakeholders".

By the nature of these various roles, each has an in-built interest', fiduciary duty to the body concerned. A 'conflict of interest' arises where these roles and duties coincide.

"Council officers and members also have fiduciary duties to the council. Situations can inevitably arise where the same person will be a decision maker or advisor both for the council and one of its entities. Examples of this include matters of reporting, contractual discussions, investment requests or resourcing agreements."

'Local Authority Company Review Guidance'

Council appointed directors should, though, make themselves available for council scrutiny committees and other council governance forums which oversee the company (although they should not be obliged disclose commercially confidential information about the entity).

C. Avoiding conflicts

Right person, right role – guidance for the Council in appointing directors

The Council can minimise the risk of a conflict by considering carefully at the outset who it appoints as a director. For example, a particular professional role – say a Head of Service – and the cluster of skills and experience such a role exhibits, may suggest that this post would be an ideal choice. In practice, this could significantly limit what the postholder is then able to do within the Council as regards decision making, access to information and influence.

Key consideration: in general, the more senior the officer, the more likely it is that their 'day job' for the Council may conflict with a company director role or would need to be inhibited to a counterproductive extent in trying to balance the two. For example, it is not considered good practice for a Section 151 Officer to hold a position within a council company.

“...Given that it is likely that certain decisions of the shareholder will require ratification by the Section 151 officer, it is not considered good practice for a Section 151 officer to hold a position with a council owned entity .”

‘Local Authority Company Review Guidance’

“Conflicts may be reduced if local authority members and officers with designated roles acting for the local authority are not also appointed to senior positions in the company.”

Local Authority Owned Companies: a good practice guide (CIPFA, 2022)

However it is not just organisational factors that could present a conflict – so could personal factors, for instance where a councillor (or their friend or relative) may have an interest in a competitor to the company concerned.

Key considerations: The council should consider nominations to the board.

1) Generally:

Appointments should relate to the relevant position in the council, not to a specific individual. It then follows that if a council-appointed director ceases to be an employee or office holder of the council, they should automatically no longer be able to hold board membership. Appointments should take account of:

- the benefits of appointing independent directors to the entity
- the need to avoid council members and officers also being appointed to senior positions in the company, if such an eventuality is likely to lead to a conflict of interest
- achieving as wide a range of skills as possible relevant to the company’s purposes and aims

2. Positions likely to be conflicted

Given the nature of their roles, and the likelihood of conflicts of interest, certain officer and councillor positions should not be appointed as directors. These include:

- Section 151 Officer
- Cabinet Members whose portfolio relates to the aims of the company
- Corporate and Service Directors whose service areas relate to the aims of the company
- Any elected member appointed to the Shareholder Committee

3) Ethical walls

Consideration should be given prior to the appointment of any officers as to whether any ethical walls are necessary – for example restricting an officer’s involvement in the ‘council

side' of any projects or initiatives that overlap with the aims and activities of the company/joint venture; or their access to confidential information relating to such projects, initiatives and activities. These should be discussed and agreed with the Monitoring Officer.

A Director will also need to be mindful of the sensitivity of the information gained within the company and take care not to disclose this inappropriately within the Council.

“It could be a breach of a director’s duty to the company either to disclose confidential company information to their appointing council, even if it were relevant to something that the council was discussing, or to disclose confidential council information to the company.”

Local Authority Owned Companies: a good practice guide (CIPFA, 2022)

D. Recognising potential conflicts

What kind of conflicts can arise for an officer or a councillor in serving as a director of a council company? Examples of areas where conflicts can arise include.

- No scrutiny of own decisions/performance: holding a council role which involves potential oversight and scrutiny of the entity, while also holding a position with the entity. For example, an entity board member who also holds a position on the council’s Audit & Governance or the Shareholder Committee would clearly be conflicted.
- Council decision affecting the company: a councillor as director making a decision on the Council that affects the company (such a councillor can however give evidence or advice to the Council on the company's behalf when invited to do so)
- Personal/private interests: holding a position as a company board member while having private financial or non-financial interests which may conflict or may be perceived to conflict with the role. For example a company board member, or member of the family, having an interest in a supplier or competitor to the company.
- Gifts & hospitality: board members receiving benefit (such as gifts and hospitality) from third parties (such as potential suppliers to the company)
- Access & use of information; opportunity: the exploitation by a board member of any asset, information or opportunity related to the entity; it could be a breach of a director’s duty to the company either to disclose confidential company information to their appointing council, even if it were relevant to something that the council was discussing, or to disclose confidential council information to the company. (The Companies Act 2006, S175 terms this the avoidance of the “exploitation of any property, information or opportunity” – whether or not the company gains advantage from property, information or opportunity).

This latter bullet point highlights a significant danger zone. While a councillor or officer may be clear about their roles within the Council and the company, they must also be alive to what those roles mean for their use of market sensitive information or other confidential intelligence that might be ‘of interest’ to the other entity but to which they would not otherwise be entitled. The officer/councillor would need to be very clear about which role they were performing – which ‘hat’ they were wearing – and not to disclose or otherwise act on the

awareness of any such information in the secondary setting.

Key considerations:

- 1) An appointee should use all opportunities to think about, identify and act to resolve any conflicts of interest. This means considering and registering their standing interests at the point of appointment. It also means taking advantage of the 'Declaration of Interests' item on each council or company board meeting agenda to think through what the business on that agenda means for any interests they may have. It is also important to think about the sources of information – particularly confidential information – that the appointee can access or may receive as part of their roles; and the extent to which this is appropriate or requires mindfulness of their fiduciary duties. The same applies to thinking through the implications when managers may oversee staff who may be working on projects which may impact their company role. A discussion with the Monitoring Officer can help.
- 2) Where a potential conflict of interest may arise, then in addition to declaring it at the relevant meeting, the appointee should not vote on the matter.

E. Behaviours, Codes and Responsibilities

Officers and members of the Council are subject to the *Seven Principles of Public Life* (the "Nolan Principles") and to their respective *Codes of Conduct* under the Council's Constitution. This applies not only when acting within their organisation but when serving on a council company. This is in addition to the responsibilities each will have under local government and company law. Regard must also be had to the Articles of Association for each company and the conflicts of interest requirements within them. Other sources of guidance are listed in the Annex.

Key consideration: It's important to be clear about the behavioural expectations. Any officers or members serving as directors should read and understand the guidance listed below.

Seven Principles of Public Life

Everyone serving in public life must act in accordance with the Nolan Principles of Public Life. They also form the springboard for the officer and member codes of conduct.

As such, officers and councillors, even when serving as directors must always demonstrate:

1. selflessness
2. integrity
3. objectivity
4. accountability
5. openness
6. honesty
7. leadership

Member Code of Conduct

Councillors must act in accordance with their council's Member Code of Conduct. The Council has adopted a Member Code, as the law requires, and this in the Constitution (Part G). The Code applies to a councillor serving as a director of a council company - except in one respect:

"The member's code of conduct applies to a member's activity as a director, except only where it directly conflicts with the interests of the company and, where that maybe the case, the potential conflict notified to the company secretary and to the Council's monitoring officer."

Local Authority Owned Companies - A Good Practice Guide (CIPFA, 2022)

The Code requires members to register and declare their interests. One of these interests would be their appointment as a director to a council company. Such transparency is key to instilling public confidence. The Member Code is also clear on the use of information received as a councillor: "I do not disclose information: a. given to me in confidence by anyone; b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless... I have consulted the Monitoring Officer prior to its release"

Officers Code of Conduct

The Officers Code of Conduct is in the Council's Constitution. This similarly requires officers to register any interests: "Employees must declare...any financial or non-financial interests which relate to their work." This should be provided at the point at which they are appointed as a director of a council company.

The Officers Code is also clear about the need to avoid personal gain and to uphold and enhance the reputation of the Council.

Articles of Association

Each of the companies will have its own Articles of Association and these will typically include their particular requirements for handling conflicts of interest.

F. Handling conflicts of interest

In matters of reporting, contractual discussion, investment requests or resourcing agreements, there is the potential for the same person to be a decision maker or advisor both for the Council and the company. It will become an actual conflict whenever that scenario occurs in practice.

Company directors have a duty in law to avoid a situation where they have, or may have, an interest that conflicts with the interest of the company. Company law and articles of association do allow provisions for directors and shareholders to authorise a conflict in some circumstances. However an officer or councillor can never waive their duty to act in the public interest when exercising their duties to the Council.

This will on occasion create an inescapable conflict of interest between someone's role as a councillor or officer of the Council and as a director of a company. In practice, once a person is appointed as a Director of the company/joint venture, their prime duty is to the company and their involvement in decision-making/voting on the company Board must reflect that.

1. **Outset - declaration:** potential Council appointees to a company should complete declaration of interest forms before their appointment is made;
2. **Training:** training on identifying conflicts of interest should be given to each appointee, as arranged or commissioned by the Monitoring Officer;
3. **Potential conflicts:** an officer or councillor considers a potential conflict exists between their 'council' and their 'company' role, they should confidentially discuss with the Monitoring Officer (or her Deputies) to determine whether a conflict exists on the council side and with the Company Secretary on the company side
4. **Declaring the interest:** the person should follow the Council's and the company's normal procedures for declaring and registering an interest; it's important that both officers and councillors take full note of the content of agendas and whether the business to be transacted raises any potential conflicts; there will be a point on each agenda where interests should be declared;
5. **Stand down from discussion:** having declared a conflict of interest, there should be no taking part in a decision about the issue;
6. **Ethical wall:** in the case of an officer who may have a conflict between their roles, the Monitoring Officer may consider implementing an 'ethical wall' between the person and their access to information, or their influence towards fellow officers; this would be recorded and proportionate to the circumstance;
7. **Annual update of registers of interest:** there should be an annual reminder to each officer/councillor to update their registers of interest to encourage continued thinking about potential or emerging interest.

APPENDIX 5

COUNCIL COMPANIES

1. INTRODUCTION

The Council has various statutory powers to enable it to set up a company which may take various forms. The Council must effectively manage the relationship between the Council and the companies to ensure that they deliver the objectives established for it by the Council and to ensure transparent and robust governance processes for both the Council and the companies with reference to the Council Companies' Governance Framework.

The Council owns 21 companies in various forms. Where the Council uses the enabling legislation to create its own companies, either as the sole or as a joint owner, the broad terms of the objects of each Council company will be recorded in its Articles of Association, while its Shareholder Agreement (where necessary) will set out more detailed operational arrangements and the matters which are reserved for determination by the Council as the shareholder. In general, these reserved matters will be key structural and high-level strategic matters rather than the "day-to-day" business and operations of the company, which will be the responsibility of the company directors.

This part of the Constitution should be read in conjunction with the Council's Companies' Governance Framework.

2. PRINCIPLES OF GOVERNANCE OF COUNCIL COMPANIES

Any decisions or recommendations in relation to the companies shall be formed with clear reference to the principles outlined in the [Council's Companies' Governance Framework.]

The Council's governance arrangements will seek to ensure the following:

2.1 Appropriate Controls and Freedoms

- The companies will be provided with sufficient freedoms to allow them to achieve their objectives, but
- The Council will retain sufficient controls to ensure that its investment is protected, that appropriate social and financial returns on investment can be obtained in line with the companies, confirmed in the business case and business plan.
- The trading activities of the companies are, wherever possible, conducted in accordance with the values of the Council.

2.2 Appropriate Relationships, Integrity, Transparency and Accountability

- Procedures operate in a way that protects the commercial interests of the companies and those procedures will ensure that the Council can carry out

its functions as an investor, as a trustee of public funds and a Council committed to due responsibility for the exercise of its functions.

- An Executive Committee or the Leader can make decisions based upon complete and accurate consideration of company business plans or proposals,
- An Executive Committee or the Leader can evaluate social and financial benefits and returns in line with the business plan, and
- The Council's Overview and Scrutiny Committee(s) are able to exercise their powers in relation to the Executive's decision making.

2.3 Understanding of roles of the Council and the Company

- That there is sufficient induction, regular training and other materials in place so that:
 - their legal duties,
 - stewardship of assets,
 - the provision of the governing documents,
 - the external environment, and
 - the total structure of the Council and the Company

are appropriately understood by Councillors in their various roles including as a Member of the Council, the Executive, Overview and Scrutiny Committees, Shareholder Committee, by officers of the Council and by Directors of the Company and that the standards outlined in the Companies' Governance Framework (informed by the Lawyers in Local Government Code of Practice, the UK Corporate Governance Code, the Institute of Directors and CIPFA) are met or, where not deemed appropriate, reasons for not doing so are clearly set, justified and approved.

3. THE ROLES AND RESPONSIBILITIES OF DECISION MAKING

The responsibility to represent the Council as shareholder for the companies is an Executive function under the Local Authority (Functions and Responsibilities) England regulations 2000.

The Shareholder Committee will decide any matters falling within company's reserved matters, to protect the Council's interests and investments in the company and determine the future direction of the company.

The Shareholder Board comprises of the Council's s151 Officer, Monitoring Office []. The SB reports into []. The activities of the Shareholder Committee will be subject to consideration by the Council's Overview and Scrutiny Committee(s) and call-in procedures.

The individual companies will not be directly accountable to the Council's Overview and Scrutiny Committee(s). Each Council-owned company is an independent legal entity which is entirely separate from the Council. The company will have its own

identity and responsibilities, so cannot be treated as an internal department of the Council. A Council-owned company is required to comply with Company law, its Articles of Association and its Shareholder's Agreement. It is not governed by the Council's Constitution.

Reserved matters follow the Council's Executive decision-making processes set out in Article [] – Executive Arrangements and will be treated as subject to part [] section [] – Access to Information Procedure Rules.

Decisions on Reserved matters relating to companies where the Council has a controlling interest, or a minority interest will be taken in the same manner as wholly owned companies. The constitution notes that in the case of companies which are not wholly owned an Executive Decision is subject to the consent of the other shareholders in the entity which shall be governed in accordance with the provisions of the relevant Shareholder Agreement.

Each company will be governed by a formally constituted Board which is tasked with delivering the Shareholder's objectives and reporting to the Shareholder/ Owner on strategic and key operational matters as set out in the [Companies' Governance Framework.]

The appointment and dismissal of Directors (including non-executive Directors) is a reserved matter for the Shareholder/ Owner/Owners and this must be reflected in the companies' articles. Directors are responsible for the management of the business of the company with exception of the reserved matters.

The Council's Overview and Scrutiny Committee(s) are responsible for scrutiny of the Executive's decisions in relation to companies and can make recommendations to the Executive on company related matters. Executive decisions on companies are subject to the Call-in processes outlined in [Article 8] – Overview and Scrutiny.

Overview and Scrutiny Committees can invite company representatives to attend meetings to provide information to support the scrutiny of the Executive. This does not extend to scrutiny of the company and its performance.

4. ACCESS TO INFORMATION

This should be read in conjunction with [Part 4 section 6– Access to Information Procedure Rules] which covers access to meetings and documents of the Council, the Executive and its Committees.

Reserved matters which require Shareholder/ Owner consent are defined in the Articles of Association or Shareholder Agreement for each company. The process for approving and recording decisions relating to reserved matter will be defined within the Shareholder Agreement and will be consistent across all companies as far as possible. Such decisions are Executive Decisions and are also captured by the Council's Access to information Procedure Rules.

Each Company will maintain strong controls framework with adequate financial records which meet the requirements of the [Companies' Governance Framework.] Each should have the documents set out below:

- Business Case – assesses the risks and benefits involved in the creation of any proposed Council Company
- Articles of Association – sets out the constitution of the Company
- The Shareholder Agreement – sets out the rights of the Council as the sole/co-shareholder and how it can exercise those rights
- The Funding Agreement – sets out what financial assistance is to be provided by the Council to the Company and on what terms
- The Business Plan – forward looking, reviewed annually, setting out what the Company will do and the objectives of the business and how they are to be achieved
- Shareholder Board Agenda and Minutes - summary or meeting discussions and decisions
- Monthly/Quarterly performance reports
- Monthly/Quarterly management accounts

All of the above documents and details about which individuals sit on the Board of Directors are accessible by Councillors and members of the public unless they contain exempt or confidential information.