

INTERNAL AUDIT REPORT

FROM: Audit and Risk Manager

TO: Chief Executive

C.C. Deputy Chief Executive
Head of Finance
Democratic Services Manager and
Deputy Monitoring Officer
Information Governance Manager
Portfolio Holder (Cllr Day)

SUBJECT: Responding to Complaints
and FOI Requests

DATE: 12 October 2021

1 **Introduction**

- 1.1 In accordance with the Audit Plan for 2021/22, an examination of the above subject area has recently been completed by Jemma Butler, Internal Auditor, and this report presents the findings and conclusions for information and, where appropriate, action.
- 1.2 Wherever possible, findings have been discussed with the staff involved in the procedures examined and their views are incorporated, where appropriate, into the report. My thanks are extended to all concerned for the help and cooperation received during the audit.

2 **Background**

- 2.1 Complaints and freedom of information requests received are responded to by various Council staff. The process helps to support transparent governance and enables the democratic process.

3 **Objectives of the Audit and Coverage of Risks**

- 3.1 The audit was undertaken to test the management controls in place.
- 3.2 This was achieved through a 'risk-based audit' approach whereby key risks are identified and then processes are assessed to provide assurance that the risks are being managed effectively. This approach has been in place by WDC Internal Audit since only the start of this financial year following an external review of the function.
- 3.3 In terms of scope, the audit covered the following risks:
- The legislation in place for complaints and freedom of information requests is not followed.
 - Services do not respond to complaints or information requests within the time frame or at all. (As well as the potential for legal and regulatory risks this risk may also impact the Councils reputation.)

- Loss of data.
- Complaints procedure not followed.
- Incorrect information shared or shared to the wrong people / unauthorised disclosure.
- Complaints regarding maintenance or repairs not followed up could result in injury or further damage.
- Staff are not trained, do not have the appropriate tools available or there is communication failure leading to them providing information or advice that is incorrect.
- Availability of staff.

3.4 These were drawn from a combination of risks identified in the Significant Business Risk Register, the departmental risk register, and discussion between the Internal Auditor and the Democratic Services Manager (the auditee).

3.5 These risks, if realised, would be detrimental to the Council with regards to meeting the following corporate objectives, as set out in the Fit for the Future Strategy:

- This service acts as an enabler for others to deliver their aspects of FFF.

4 Findings

4.1 Recommendations from Previous Reports

4.1.1 This is the first audit of this subject area so there are no previous findings.

4.2 Legal and regulatory risks.

4.2.1 The legislation in place for complaints and FOI requests is not followed.

Warwick District Council has a clear information governance framework in place along with numerous policies relevant to complaints and information requests. Along with a complaints policy, other relevant policies include data protection and privacy, information access and rights, record management and information security incident management. The policies ensure that all relevant legislation is considered such as: Data Protection, Privacy and Electronic Communications Regulation and the Common Law of confidentiality.

The policies are clear and set out the expectations of the Council and, where relevant, the customers. The main complaints policy details timescales and escalation processes should the complaint fail to be resolved to a satisfactory level.

The main website features details regarding Freedom of Information (FOI) and environmental information requests. There are links available to access relevant forms and to read the policies in place.

4.2.2 **Services do not respond to complaints or information requests within the time frame or at all. (As well as the potential for legal and regulatory risks this risk may also impact the Councils reputation.)**

The timeframe to respond to complaints is easy to locate within the policy as well as being published on website. Both sources provide the same information regarding the timescales: Three working days to acknowledge the complaint and 20 working days to provide a response.

The complaints received for this financial year so far total 24 at stage one and four at stage two.

The review of the complaints showed that thirteen (54%) of the stage one complaints took over three working days to acknowledge, one of which took 56 days due to the complaint email being redirected incorrectly to junk mail by the spam filter. This particular complaint had then been sent to the Ombudsman, after not receiving a reply within the specified timeframe. The Ombudsman had contacted the Council for further information and had to chase for a response almost two months later. It then took a further six days to acknowledge the complaint after the chaser email from the Ombudsman. Other late acknowledgements were not as long, taking between four and sixteen days, with the average falling at eight working days (after removing from the statistics the complaint that took 56 days to acknowledge).

The length of time taken to issue a response is also poor with 18 of the 24 receiving a response after the 20-working day timeframe. In other words, 75% were late. In most cases an extension of time had been sought, but not in all. Often this was due to the case being allocated late to an investigating officer. The review identified that there is a common theme of investigating officers not responding to the requesting email or staff being on leave causing a delay in the case being allocated. In some cases, this meant that the investigation officer only received the case a few days before a response was due to be issued.

A review of the four complaints received at stage two was also completed. All of them were acknowledged after three working days, although they had previously been investigated and responded to at stage one. Only two of the stage two complaints have been issued a response so far, with both of these taking well over 20 days (44 and 53 working days).

A selection of Council staff has received complaints training and are added to a rota of Investigating Officers. Although the most recent copy (2016) lists 40 Council staff as investigating officers, several of those listed no longer work for the Council. There is also a stage two rota which lists 22 Council staff as Investigating Officers. This rota, dated March 2021, lists the staff member name, when they last carried out a complaints investigation and a notes section. Although the rota is dated March 2021 the most recent update was added in October 2020.

Investigating Officers are emailed using the list to determine the Officer next in line to carry out an investigation. The email states a timeframe in which they need to respond to the complaint so staff can prioritise the case accordingly.

FOI and Environmental Information requests (EIR) were also reviewed. From 1 January 2021 to 12 August 350 requests had been received. The Council's webpage confirms that the timeframes are two working days to acknowledge the complaint and 20 working days to complete the investigation and respond to it.

On review of the requests, 104 (30%) took more than two working days to acknowledge and 52 (15%) took over 20 days to issue a response. Nineteen have not yet been responded to although none is late as of the 12 August. A total of 54 were either refused or only part disclosed.

Statistics from over the last two years had been compiled and shared as part of the audit. They show that for the financial years 2019-20 and 2020-21 responses to stage one complaints have been below the response timeframe target of 90%. The statistics are produced for each quarter, with the lowest showing that around 20% of complaints were responded to on time and the highest at just over 70%.

The statistics shared break down the responses to service areas, showing that there are concerns with all service area response times. There are particular concerns with one service area when it comes to responding to FOI requests with only 1 in 3 requests responded to on time. Responses are below the ICO-expected performance rates which are at least 90%. Statistics show that other services' response rates are between 84% and 87%.

Recommendations

- 1. The effectiveness of the complaints allocation rota and the process of allocating an officer should be reviewed.**
- 2. The process of the management of the timeliness of complaints should be reviewed to ensure that they are acknowledged and resolved within the Council's specified timeframes.**

The above recommendations would have also applied to FOIs and EIRs. However, a new system is currently being rolled out to manage the requests. The system allows a more streamlined approach to the requests process ensuring that the request is allocated and managed promptly. It will automatically send regular reminders to staff to respond. The training has already begun and the roll-out will begin within the next few weeks. A walkthrough test was carried out with the auditor concluding that the system is easy to navigate and use with on-screen reminders to all users highlighting where responses are still outstanding. The system calculates the 'respond by' date automatically and factors in a five-day buffer allowing time for CST to review the response before issuing it.

4.3 Reputational risks.

4.3.1 Loss of data.

A sample of requests was reviewed where there had been a partial disclosure, or the information request had been refused. Refusal was due to various

reasons such as the Council not holding the information, unclear request, information not able to be shared due to its sensitive nature, other legislation preventing the information being shared, or the request being anticipated to take an unreasonable amount of time to respond to. The reasons provided for partial disclosure or refusal are clearly explained in the response. No negative responses from the requester could be found.

On discussion with staff cases were mentioned where working from home has prevented the team from redacting information or where the lack facilities or resources available meant the information request could not be printed and issued as part of the response. These issues meant only a partial response could be issued as full disclosure could have breached other legislation. The Democratic Services Manager (DSM) confirmed that the issues had arisen due to the working restrictions in place. Where staff would normally redact a document by printing and scanning an edited document, preventing the redactions from being reverted, this has not been possible for staff homeworking.

Requests are checked by another staff member and signed off before being issued. This helps to prevent sharing of data that isn't relevant or breaches legislation, as well as preventing it being shared with the wrong recipient.

4.3.2 **Complaints procedure not followed.**

The documents regarding the complaints procedure are readily available for staff on the intranet. They are clear and easy to understand, with templates and checklists available as guidance. The information governance manager is also able to provide support, as needed, when there is a disclosure or legislation query or when an information request has been received.

When an FOI request or complaint is received it is allocated to an investigating officer. The investigating officer is emailed the request and is informed of the timescale in which a reply is required. All staff involved in responding to Complaints and requests have access to the intranet, including when working from home. This enables them to follow the advice provided and use the templates provided.

4.4 **Fraud risks.**

4.4.1 **Incorrect information shared or shared to the wrong people / unauthorised disclosure.**

The Learning and Development Officer reported that 33 members of staff attended the complaints training held at the start of this year. There were also six sessions run on FOI requests, with a total of 91 WDC staff attending the live session. All the FOI sessions were recorded so staff can access them as required.

Several staff involved in the initial and key stages of processing complaints and FOI were interviewed. This included corporate support staff, systems staff, and managers. All staff were aware of the relevant timescales and knew where to find information and templates when needed. All staff knew who to contact if they were unsure about sharing data or information.

The guidance and templates available follow the Council's policies and incorporate the relevant legislation regarding data protection and sharing of information.

As well as the provision of training, templates and guides, together with checklists and support from the information governance manager, responses are also signed off by a senior manager before being issued to confirm that the information provided is appropriate and that the response and the recipients meet the requirements of disclosure.

4.5 **Health and safety risks.**

4.5.1 **Complaints regarding maintenance or repairs not followed up could result in injury or further damage.**

Six complaints were identified as repair or maintenance complaints within the current year. Half of them were acknowledged within three working days. Only one of the six was resolved within twenty working days whilst the longest took 98 days to resolve. What often happens is that whilst the complaints are being reviewed and managed, further issues arise. This adds more complaints to existing ones. This often applies where repairs or maintenance work is completed to resolve the complaint, but not to a satisfactory standard, leading to further complaints.

Although the repairs or maintenance issues exposes the complainants to minimal physical health and safety risks, chasing the status of the repairs and complaint is often stressful and mentally draining for the complainant. This is clear in the correspondence between them and the investigating officers.

Recommendation

Service area managers should be aware of complaints within their area and manage them effectively to reduce the number of late responses.

The recommendations at 4.2.2 are also relevant for this risk.

4.6 **Other risks.**

4.6.1 **Staff are not trained, do not have the appropriate tools available or there is communication failure leading to them providing information or advice that is incorrect.**

The staff involved in responding to complaints and FOI requests receive training every two to three years. Support is provided by the Information Governance Manager and information, guidance, and templates are available on the intranet. New complaint investigators are mentored through their first investigations by the DSM.

Complaints training was last undertaken early in 2021, run by the Local Government and Social Care Ombudsman, with 33 staff in attendance. There

was also a brief training session undertaken explaining the follow-up and buddy system for new level 2 handlers.

Training for FOI requests is carried out by the Information Governance Manager. This is completed on a regular basis to ensure any updates to legislation are included. Six sessions were recently undertaken covering different aspects of requests. The sessions were recorded and are available to all staff on the intranet. 91 staff from the Council attended the live sessions.

As part of the audit, several staff who frequently manage the allocation of requests and complaints were consulted with. All of them were able to confirm that they had received training and provide details on where they would find further guidance should they need it. All of them commented that they would get in touch with the Information Governance Manager if they had concerns or questions.

4.6.2 **Availability of staff.**

A rota for Complaints Investigation Officers for Stage One Complaints was last updated in 2016. Since then, however, several staff have left. There is also a rota in place for Stage Two Complaints, dated as March 2021. It requires staff to update their availability. However, no dates of when the updates are valid from and until are recorded so it is unclear whether they are available or if the "unavailable" status still applies.

When a complaint is received a staff member on the rota is emailed and given a length of time to confirm acceptance of the case; this is usually a week. If the staff are taking annual leave, sick leave or do not reply, the case is passed to another member of staff. The complaint is often not acknowledged until an officer has accepted the case to allow a point of contact to be given. The downside of this process is that it causes delays both when acknowledging and when allocating the complaint. This is evident when reviewing the statistics.

FOI requests follow a similar process when allocated to an appropriate staff member. When reviewing the FOI requests, it was noted that there is a frequent lack of response from some service areas or late acknowledgements to the email. This results in late responses to the request. This should be reduced once the new system for requests has been fully implemented.

Recommendation

The process of allocating complaints should be reviewed to ensure the responder has received the email and is able to complete the investigation.

The recommendations at 4.2.2 are also relevant for this risk.

5 **Conclusions**

- 5.1 Following our review, in overall terms we are able to give a MODERATE degree of assurance that the systems and controls in place in respect of

Responding to Complaints and FOI Requests are appropriate and are working effectively to help mitigate and control the identified risks.

5.2 The auditor noted that should a system similar to the FOI system be used for the management of complaints, or actions be implemented which resolve the recommendations the risks could be reduced or removed entirely which should result in a substantial level of assurance.

5.3 The assurance bands are shown below:

Level of Assurance	Definition
Substantial Assurance	There is a sound system of control in place and compliance with the key controls.
Moderate Assurance	Whilst the system of control is broadly satisfactory, some controls are weak or non-existent and there is non-compliance with several controls.
Limited Assurance	The system of control is generally weak and there is non-compliance with controls that do exist.

5.4 The main issues that require further action are summarised below:

- The allocation rota and process in respect of allocating complaints.
- The time taken to acknowledge and respond to complaints.
- Service area management of responding to complaints and requests.
- The process of allocating complaints.

6 **Management Action**

6.1 The recommendations arising above are reproduced in the attached Action Plan (Appendix A) for management attention.

Richard Barr
Audit and Risk Manager

Action Plan

Internal Audit of Responding to Complaints and FOI Requests – October 2021

Report Ref.	Risk Area	Recommendation	Rating*	Responsible Officer(s)	Management Response	Target Date
4.2.2	Legal and Regulatory Risks. Services do not respond to complaints or information requests within the time frame or at all. (As well as the potential for legal and regulatory risks this risk may also impact the Councils reputation.)	1. The effectiveness of the complaints allocation rota and the process of allocating an officer should be reviewed.	Medium	Corporate Support Team Manager & JMT	<p>Officers to be notified by email they are next on the list (including details of the exemption process). Then telephoned as soon as it is their turn.</p> <p>JMT to discuss the challenges faced on workload and the importance of responding to complaints in a timely manner keeping complainants informed with their officers who undertake complaints investigations.</p> <p>Chris Elliott to personally write to all Stage 2 investigators on the importance of their work and supporting that if stage 2 complaint comes in for them he knows other work will have to wait.</p>	<p>From October 2021</p> <p>By end of November 2021.</p> <p>By end of November 2021.</p>

Report Ref.	Risk Area	Recommendation	Rating*	Responsible Officer(s)	Management Response	Target Date
		2. The process of the management of the timeliness of complaints should be reviewed to ensure that they are acknowledged and resolved within the Councils specified timeframes.	Medium	JMT	JMT to discuss the challenges faced on workload and the importance of responding to complaints in a timely manner keeping complainants informed.	By end of November 2021.
4.5.1	Health and Safety Risks. Complaints regarding maintenance or repairs not followed up could result in injury or further damage	Service area managers should be aware of complaints within their area and manage them effectively to reduce the number of late responses.	Low	JMT Corporate Support Team Manager	Ensuring that complaints that identify repair issues are logged promptly on receipt of the complaint to be actioned/investigated. CSteam to introduce monitoring reports of remedies and learning points. Quarterly report to JMT for conformation of work completed (similar process as audit reports)	When received. From the next quarter then ongoing on a quarterly basis.
4.6.2	Other Risks. Availability of staff.	The process of allocating complaints should be reviewed to ensure the responder has received the email and is able to complete the investigation.	Low	Corporate Support Team Manager	See 4.2.2	See above.

* The ratings refer to how the recommendation affects the overall risk and are defined as follows:

High: Issue of significant importance requiring urgent attention.
Medium: Issue of moderate importance requiring prompt attention.
Low: Issue of minor importance requiring attention.