

Audit and Risk Management Committee
Tuesday 10 March 2020

REPORT TITLE:	Council Statutory Duties
REPORT OF:	Director of Finance and Investment Director of Governance and Assurance

REPORT SUMMARY

Councils have a range of statutory duties that they are required to fulfil. The committee requested that a review of delivery of Council duties was undertaken. This report provides information regarding high level statutory duties delivered by the Council and a list of statutory duties required to be delivered.

Fulfilling the Council's statutory duties has relevance to all Wirral Plan 20/20 pledges and supports the effective delivery of the Plan.

This matter affects all Wards within the Borough.

RECOMMENDATION/S

That the members of the Audit and Risk Management Committee note the report.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 To provide members of the Committee assurance that the Council is fulfilling its statutory duties.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The report was requested by the Chair of the committee so no other options were considered.

3.0 BACKGROUND INFORMATION

- 3.1 At this Committee on 22 July, the Chair of the Committee asked for a report to be produced on the Council's Legal Requirements. This was in response to several recent issues that the Council had encountered that should have been identified and resolved in advance e.g. poor Ofsted Inspection, the absence of a Local Plan. The Chair was concerned with the level of reassurance (the removal of doubts and fears) provided to the Committee as opposed to the level of assurance (declaration of confidence, a promise) and requested a paper on the assurance with compliance against these legal requirements.
- 3.2 The specific request was for a table to be produced of what our legal requirements are and our performance against them. However as the report identifies it has not been possible to report how compliance takes place and is measured against every single legal or statutory obligation, of which there are over 3,000.
- 3.3 Local authorities are creatures of statute. To be legitimate, any act by the Authority may only be an exercise of a power or duty ascertained from legislation, expressly conferred or derived by reasonable implication from its provisions, and may then only be pursued if it is furtherance of the objects of that legislation in placing those functions upon the Authority. Those functions are set out in numerous Acts of Parliament and secondary legislation and many of these functions have associated direct and indirect legal duties, including various duties that may apply upon the exercise of a power but that derive from separate sources of legislation or arise through the application of common law. For many years no comprehensive list of legal duties placed on local authorities was available but in 2011 the government agreed with the Local Government Association (LGA) that it should compile a list of these duties to provide clarity on requirements. In June 2011, a list of duties was published by the Government to outline the requirements on local authorities and created the first record of Council duties. This is widely acknowledged to be inconclusive and must be considered as incomplete for guidance purposes only.
- 3.4 Local Authority duties can change as new legislation comes into force, as a result any national list of duties requires regular review to ensure it remains relevant. The LGA now publishes a guide listing an outline of powers and duties from which Council duties can be reviewed. The powers and duties guidance provide information on what current legislation gives English and Welsh councils the power to do and what it requires them to do in law.

- 3.5 The LGA duties guidance list is provided in Appendix 1. It provides a brief summary of Local Authority duties. Many duties are more detailed than the summary and this guide is not designed to give definitive legal advice. This duties list was last updated in March 2018.

4.0 ASSURANCE OF COMPLIANCE WITH STATUTORY/LEGAL/OTHER DUTIES

- 4.1 Not all legal duties have performance indicators by which the Council has to report progress, therefore there is no comprehensive formal requirement to report whether all legal duties are being complied with. A table with a check as to whether they are being adhered to will not be an indicator of assurance for the Committee as much of the statutory duties overlap with policies, procedures and processes, and other requirements, that are not statutory that the Council also adhere to. To provide assurance to the Committee, the report attempts to identify the areas of responsibility for each Directorate, including the statutory functions and provide examples of how Directorates are complying with these. Each Directorate will be different and a lot of corporate processes and procedures have been put in place, or if already in place have been made more robust over the past 12 months to ensure compliance can be evidenced. Appendix 2 provides a list of the functions of each Directorate and the statutory and legal duties within it, the risks and how local assurance can be provided.
- 4.2 General corporate assurance can also be provided to evidence that each Director is accountable to ensure statutory, legal and other duties within their areas are being complied with. This is undertaken in a number of ways (please note that these are examples of where governance exists to ensure compliance and there are many others not listed):

(a) External quarterly performance indicators

Since the requirement for external performance indicators e.g. Best Value Performance Indicators, Comprehensive Performance Assessment ceased, the Council has kept its own list of performance indicators based on best practice and available local and national benchmarking data and each quarter/annually, progress is published against these indicators. Progress is rated as blue (completed) red, amber or green. Where progress is given an amber or red rating these indicators are discussed at the Council's Strategic Leadership Team and Directors instructed to carry out necessary actions to ensure progress can be brought back on target. This is reported externally on the website and includes such performance indicators as:

- Percentage of young people aged 16 and 17 who are Not in Education, Employment or Training (NEET)
- Rate of hospital admissions due to substance misuse in young people
- Percentage of permanent exclusions from Wirral Schools

(b) Half yearly Individual performance appraisals and monthly one to one meetings

The Chief Executive holds monthly one to one meetings and half year performance appraisals with his direct reports to hold them to account in delivering the functions and requirements of their service. This is measured by progress against annual

personal objectives where Directors provide evidence to the Chief Executive of achievement or, for non-achievement an action plan to ensure these can be met. Where objectives are not being met and this is usually within the ability of the role, a formal performance management process will be initiated. Following the implementation of the new People Strategy in 2019, personal objectives are more robust, meaningful and measurable and may cover areas of statutory and legal compliance. Each officer has a list and the managers are required to tick that the meetings have been carried out. This tick exercise is not a measure of the quality of those meetings however and therefore only represents that a meeting has been held. The quality of the conversations, measurement and evidence of compliance is undertaken by other areas to gain assurance such as peer reviews, 360 degree feedback, staff forum etc.

(c) Quarterly Directorate Performance meetings

A new monitoring measure implemented in December 2019 by the new Chief Executive to hold Directors to account for their Directorate performance on a quarterly basis. These meetings focus mainly on financial, HR, Audit and Risk performance but also includes specific Directorate areas of note that may result in a high financial, legal or reputational risk to the Council if not complied with. These meetings are where the Chief Executive will gain assurance from Directors that compliance with statutory and legal responsibilities can be evidenced. Examples include:

- Local Plan housing targets
- Strategies are in place and up to date
- Business Continuity arrangements are in place and up to date
- The impact of new legislation has been assessed and any new requirements are in place
- Specific and Directorate complaints received have been resolved and measures in place to resolve the root cause of the complaint
- Financial returns have been signed off and have been submitted by the relevant deadline
- Multi-Agency Safeguarding arrangements through Practice Reviews (independent reviews) have been completed and are satisfactory
- Major projects progress to target on cost/quality and time
- Feedback on Peer Review e.g. on Statutory Social Work has been received and assessed and any actions have been identified and are being implemented

(d) Compliance Review

A review was commissioned by the Chief Executive in 2019 to review compliance against specific areas. This review is being carried out by the Assistant Director (AD) of Finance and has currently completed its first area of corporate credit cards. The AD Finance chairs the Compliance Review Group, which is a sub-group of Corporate Governance Group and is a cross-organisational group that look at compliance against finance, HR and legal duties. These activities are not specifically statutory or legal requirements but they will support overall assurance statements of compliance with statutory or local duties as most of these areas are areas of good practice that will form a view of the effectiveness of a function e.g. the effectiveness of compliance with budget management procedures will contribute evidence towards assurance that an

medium term financial strategy is in place which the Chief Finance Officer has to sign off in the annual statement. Examples of areas the compliance sub-group review are:

- Small purchases to avoid procurement regs
- No advance purchase orders
- Appraisals
- Mandatory training
- SLT decisions
- Data storage
- Non-return of IT kit
- Return to work interviews
- Sickness recording
- Workplace assessments
- Business Continuity Plans
- Risk Registers
- Gifts & Hospitality
- Scope creep (contracts, honoraria, Interims etc.)
- No Business Case
- Budget management
- Conflict of interest declarations
- Payroll schedules
- Emergency payments
- Use of corporate cards/pcards/petty cash

(e) Overview and Scrutiny Meetings

Overview and Scrutiny Committees are responsible for holding the Council's Executive to account and for monitoring the effectiveness of Council services and those of partner agencies. This included adherence to statutory and legal duties and functions. Overview and Scrutiny meetings provide a function for pre and post scrutiny to challenge decisions proposed and decisions made. They are a forum for Members to call for policies, procedures, actions, performance and decisions to the meeting to determine whether they are effective or not and if not to provide an action plan for improvement. Each quarter each Scrutiny Committee receives a report on Directorate performance that they are able to challenge if they so wish. Scrutiny adds value by focusing on improving performance through monitoring, questioning and making recommendations on the way services are provided, decisions are taken and policies implemented. Recent past Overview and Scrutiny Committee's have received reports on the performance on the officers with regard to:

- Section 75 Agreements
- Quality of Care Home provision
- Children & Families Databook – summary of performance
- Scrutiny regular reality visits in Children & Families
- Education data attainment reports
- Annual Highways Capital Programme

(f) Annual Governance Statement

It is a statutory requirement for the Authority to review, at least once a year, the effectiveness of its governance arrangements and publish an Annual Governance Statement (AGS). The AGS is a key corporate document that is intended to provide an accurate representation of the corporate governance arrangements in place during the year and highlight those areas where significant gaps or improvements are required. This will include an assessment of compliance with statutory and legal duties and functions.

“Governance is about how local government bodies ensure that they are doing the right things, in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner. It comprises the systems and processes, cultures and values, by which local government bodies are directed and controlled and through which they account to, engage with and, where appropriate, lead their communities”. (Delivering Good Governance in Local Government Framework)

The review of the effectiveness of the Council’s overall corporate governance arrangements requires the sources of assurance, which the Council relies on, to be brought together and reviewed. The review of effectiveness is undertaken in two ways:

- Directors are required to provide details and supporting evidence of the control framework operating in their areas of responsibility through completion of this document (Governance Assurance Statement process)
- An assessment of the Council’s controls is undertaken against the Code of Corporate Governance (the AGS review).

The AGS covers all significant corporate systems, processes and internal controls, spanning the whole range of the Authority’s activities and is reported to the Audit and Risk Management Committee. The Committee can request specific items to be included in the AGS if they do not feel that governance arrangements are in place. The committee did this in 2017/18. Those items are reported on during the year to provide updates to the committee of work undertaken and actions to improve governance in those areas.

The AGS was improved in 2018/9 and will be further for 2019/20 to provide a much more comprehensive representation of compliance.

(g) Directors Self-Assessment Governance Assurance Statement (Annual Governance Statement)

On an annual basis, each Director is required to complete a self-assessment governance statement and provide to the Monitoring Officer a statement of assurance over compliance with policies, codes, regulations and statute, to inform the Annual Governance Statement. The current process statement requires Directors to RAG (red, amber green) rate how they score against 8 specific themes, one being ‘compliance with laws, regulations, internal policies and procedures, and ethical considerations’ The statement requests each RAG rating to be evidenced and to provide a plan of action for items rated amber or red. This document is discussed at Strategic Leadership Team, led by the Chief Executive and at which the Monitoring Officer and s151 Officer are present, to identify any cross cutting or corporate gaps that need addressing to ensure compliance, the outcome of which is provided for the

Annual Governance Statement. This document will also form part of the new quarterly performance meetings with the Chief Executive and Finance Director so that Directors can provide evidence that actions are being completed effectively.

(h) Role of Chief Finance Officer Statement

The Chief Finance Officer must complete on an annual basis a statement that evidences how the 5 principles as determined by CIPFA (The Chartered Institute of Finance and Accountancy) of the role of the Chief Finance Officer are being met. This statement is used in performance meetings with between the Chief Finance Officer and the Chief Executive so that the Chief Finance Officer can provide the Chief Executive with evidence based assurance that the role is being completed effectively. This includes items such as ensuring that a medium term financial strategy is in place to ensure the financial sustainability of the Council, ensure that the statement of accounts is published on time, ensuring effective internal controls are in place. During this conversation and upon sight of the evidence, the Chief Executive will be able to determine whether the Chief Finance Officer had appropriate arrangements in place to ensure compliance relevant statutory or legal duties.

(i) Corporate Governance Group

Corporate governance is a term used to describe the way that organisations direct and control what they do. For local authorities, it includes the systems, policies and processes as well as the new values and behaviours that underpin a Council's arrangements for effective:

- Leadership
- Management
- Performance
- Delivery of positive customer outcomes
- Community engagement
- Stewardship of public money

The principles of good corporate governance below are identified in the CIPFA/SOLACE guidance. Compliance with the principles can provide assurance to evidence that statutory and legal duties are being complied with.

- Behaving with integrity, demonstrating commitment to ethical values and respecting the rule of law
- Ensuring openness and comprehensive stakeholder engagement
- Defining outcomes in terms of sustainable economic, social and environmental benefits
- Determining the interventions necessary to optimise the achievement of the intended outcomes
- Developing the entity's capacity, including the capability of its leadership and the individuals within it
- Managing risks and performance through robust internal control and strong public financial management
- Implementing good practices in transparency, reporting and audit, to deliver effective accountability

The Corporate Governance Group was established to review whether the principles of corporate governance are being followed and appropriate governance arrangements are in place for a range of items including:

- Corporate Health Indicators
- Programme Management Office dashboard for major projects
- Risk Management
- Information Governance
- Internal Audit Reports
- Significant Governance Issues

(j) Specific meetings/boards

Some specific Board and meetings have been established to gain assurance and to challenge officers that functions, which could be statutory and legal are being undertaken effectively and where they are not able to evidence this, to provide an actions plan. The assurance received from these meetings is then provided by the Chair of these meetings in other for a such as overview and scrutiny committees, SLT, AGS etc.

Examples include:

- Strategic Health & Safety Board (new)
- Children & Families Directorate Dashboard – indicators that are specifically linked to statutory duties i.e. timeliness of adoption, Childrens & Family's needs, frequency of visits to children.
- Highways & Transport Portfolio Board – governance to oversee delivery of Highways & Transport Capital Programme
- Streetscene Environment Services Contract (Biffa) – governance includes quarterly Partnership Board and Cabinet Member Annual Review
- Financial Resilience Programme Board to ensure legally balanced MTFS
- Library Managers monthly meeting to ensure service is delivering against its strategy and is delivering a comprehensive and efficient service as is its statutory responsibility
- Pooled Funded Executive Group

(k) External Published Scrutiny

Alongside the extent of evidence of compliance with statutory and legal requirements, there are specific external scrutiny/inspections/compliance requirements that the Council is measured against. These may not all include areas of statutory and legal functions and may just measure against good practice. The findings and conclusions of these reviews are evidence based and where an unsatisfactory conclusion has been found, and action plan that is monitored (generally by the Overview and Scrutiny Committees) is expected to be produced. Examples of external requirements include:

- External Audit Reports
- Annual Ofsted Focus visits and 3 yearly full inspections
- Annual Ofsted conversation that includes schools

- Peer Reviews and Challenge process for specific and all services

4.3 Adult Social Care assessment of care walk through

Appendix 3 provides a walk through of the general process for someone requesting support services from adult social care services. It does not describe the full range of statutory and professional functions as these are listed in Appendix 2 but it does provide details of how these functions are discharged and evidenced.

This provides information to the Committee of how the process engages with the person requesting care and their families and how this is carried out in accordance with relevant policies and procedures and recorded at each step which is available for inspection and audit. It also provides details of relevant authorisations that are complied with. For the Committee to gain absolute assurance that this process has been followed in compliance with statutory and legal requirements, the Committee would have to inspect the walk through files, policies and authorisations and have dialogue with the person/families requesting the care.

4.4 Children & Young People Procedures Manual

Under the LGA schedule, there are 565 separate legal duties and powers attributable to the Children and Young People Directorate. It is not practical to provide assurance and performance against every one in a specific new table for this report, especially as this information is already available in several other formats, including the evidence and assurance that can be provided in the items included above in section 4.2 and within the Directorates own specific processes, policies and procedures about how they operate to ensure they comply with their statutory and legal duties.

Similar to the Adult Social Care walk through, Children and Young People Directorate have an on-line procedures manual that details their processes and procedures for operating the service and in doing so, complying with their statutory and legal duties. This will be similar across all Directorates but in providing the example for Children and Young People Directorate, the committee will be able to link the new processes and procedure within the Directorate to the information included in the Annual Governance Updates to the committee throughout 2018 to provide assurance that the actions of Ofsted Improvement Plan were being implemented.

The manual can be accessed fully in the public domain at <https://wirralchildcare.proceduresonline.com/index.html> and provides a comprehensive list of how all children and family procedures are carried out. This includes for example, from when a child is placed under the care of a Social Worker, independent agency engagement with the child, case file recording, social worker supervision and case file audit, escalation and reporting to Team Mangers, exception reporting to Heads of Service and Assistant Directors to reporting performance and escalations to the Director of Children Services.

5.0 FINANCIAL IMPLICATIONS

- 5.1 There are no direct financial implications arising from this report.

6.0 LEGAL IMPLICATIONS

- 6.1 The legal implications are covered in the body of the report.
- 6.2 Key to supporting the direct functions of the Authority are the statutory and proper officer functions of the governance chief officers, the head of paid service, s.151 officer and the monitoring officer, and the personal duties placed upon them.

7.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 7.1 Delivery of statutory duties is part of the existing There are none arising from this report.

8.0 RELEVANT RISKS

- 8.1 Legislation which dictates the duties of Local Government is subject to change and duties may be amended or removed and new duties may come into force. All Directors within the Council are responsible for the duties in their area and service teams routinely review new legislation and its implications as it is comes into force. This work is supported by the Governance and Assurance Team as required. Directors are involved in national or regional groups where changes to, and new legislation and duties are reviewed to help support their effective implementation. National bodies such as the Local Government Association and CIPFA also publish information regarding changes in council duties which the Council can review as required.

9.0 ENGAGEMENT/CONSULTATION

- 9.1 No consultation was undertaken related to the production of this report. Consultation is required with a range of stakeholders for the fulfilment of some Council duties; this is carried out as required.

10.0 EQUALITY IMPLICATIONS

- 10.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.

Has the potential impact of your proposal(s) been reviewed with regard to equality?

(b) No because there is no relevance to equality within the report of assurance with legal duties to the Committee, however Equality Impact Assessments will have been carried out in each individual Directorate area in fulfilling their legal obligations

11.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

11.1 A number of Council duties have direct relevance to environmental and climate implications including supporting the Council's response to the environment and climate emergency. However, the content and/or recommendations contained within this report are expected to:

- Have no impact on emissions of CO2.

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APPENDICES

Appendix 1: Local Government Association Duties Summary List

Appendix 2: Key Statutory Duties by Directorate

Appendix 3: Adult Social Care Walk Through