

## LEDBURY TOWN COUNCIL

**CONFIDENTIAL**

<b>FINANCE, POLICY &amp; GENERAL PURPOSES COMMITTEE</b>	<b>3 FEBRUARY 2022</b>	<b>AGENDA ITEM: 9</b>
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Report prepared by Angela Price – Town Clerk

### **SPECIAL AUDIT REPORT**

#### **Purpose of Report**

The purpose of this report is to provide Members with a copy of the Special Audit Report and to provide details of what has been actioned to date to improve the governance with Ledbury Town Council and to provide suggestions on what is still required to ensure the points raised within Mr Rose's report are acted upon.

#### **Detailed Information**

Following the Judicial Review in 2018/19 it was agreed that Ledbury Town Council would commission a special audit report to review the governance and process of the council that had been in place at the time of the Judicial Review. The purpose of this review was to ensure that the Council could ensure that policies and procedures were updated so as the issues leading up to the Judicial Review would not be repeated.

Following several enquiries and the appointment of an auditing company who subsequently withdrew due to a conflict of interest, the council appointed IAC Audit and Consultancy Ltd to undertake the governance review in December 2020.

Mr Kevin Rose of IAC Audit and Consultancy Ltd met with the Town Clerk to discuss the scope of the review following which he submitted a fee proposal, detailing how he proposed to approach the review. The proposal was considered and approved at a meeting of the Finance, Policy & General Purposes Committee in December 2020.

As part of the review Mr Rose sent a questionnaire to councillors asking them to provide responses, which would be treated anonymously, to help with the gathering of information.

The first draft of the report was received on 6 June 2021 and a copy was made available to the then Mayor and Deputy Mayor (Councillors Vesma and Harvey) for consideration. Some observations were made on the report, and these were provided in a response to Mr Rose on 12 July 2021. The final draft was received at the end of July, and the report was provided to the new Mayor and Deputy Mayor (Councillors Manns and Howells) for consideration, affording them the same courtesy that had been given to the former Mayor and Deputy Mayor.

Following sight of the report the Mayor and Deputy Mayor offered some observations on the report and these were also made available to Mr Rose.

The report was included on an agenda of the Resources Committee held on 2 September 2021, which Mr Rose attended. It was agreed at that meeting that the report should be deferred to an extraordinary meeting of the Finance, Policy & General Purposes Committee as this was the committee that dealt with all audit matters.

Councillors Hughes asked that some additional information be included in the report:

- That additional information be included to show how the conclusions reference was evidenced in the report.
- That information in relation to the scope of the review be provided

Mr Rose agreed that he would make these amendments and a copy of the amended report and his initial proposal letter, which provides a scope of the review as provided by Ledbury Town Council is attached.

### **Conclusions**

In his report, Mr Rose has identified a number of conclusions which the Clerk has been asked to consider and provide information on improvements that have been made or need to be made to ensure that they are not repeated.

The following points provide information on what process have improved following the outcome of the Judicial Review and where there is still some improvement required. These are based on the 9 conclusions as provided in Mr Rose's report and it should be noted that at the meeting of the Finance, Policy & General Purposes Committee held on 27 September 2021 it was **RESOLVED** to recommend to Full Council that the conclusions in Mr Rose's report be accepted.

**1. During the period under review that Council failed to ensure a robust system of corporate governance was in place.**

- With the introduction of the CiLCA qualification, Councils should be able to ensure that good governance will be managed by their Clerks. Ledbury Town Council recognise the importance of having a CiLCA qualified Clerk and when recruiting this was agreed to be an essential requirement or that the successful candidate would agree to obtain the qualification. They have also made this a requirement for the Deputy Clerk position.
- The requirements of both staff and Councillors in this sector can seem very strange to anyone who is not used to working in such an environment and the Clerk and Councillors have recognised the benefits of admin staff obtaining the ILCA qualification, which provides a basic understanding of why they are asked to carry out many of their day to day tasks and the need to meet statutory requirements in doing so. Recently two members of staff have obtained the ILCA qualification and going forward it would be prudent



to ensure all office based staff acquire this, with the exception of the Accounts Clerk. The Clerk would suggest that the Accounts Clerk and the Clerk and possibly the Deputy Clerk in due course, undertake the FILCA qualification that was launched on 11 October 2021. This will provide good understanding of the requirements of the financial needs of the Council, as per the Accounts and Audit Regulations 2015, which underpins the financial practices of this sector.

- Upon joining the Council in April 2019 the Clerk recognised that corporate governance was not being managed as it should be. Following the Council elections in May 2019, at the Annual Meeting, the Clerk provided Members with a number of updated and amended governance documents which included Standing Orders, Financial Regulations, Terms of Reference for all Committees and Council Code of Conduct. In 2020 the Asset Register and Corporate Plan were also included in the agenda for the Annual Meeting. – it is recommended that these are reviewed at all future annual meetings.
- To date in excess of 30 workplace policies have been amended or drafted since 2019, and whilst there are still some outstanding, it is anticipated that these will have been completed by the end of the 2021/22 Municipal year. A list of policies is attached showing those that are completed and those that are still to be complete.

**2. The Council repeatedly failed to comply, over a period of years, with most aspects of governance as set out in the Annual Governance Statement**

- Attached is a list of the 8 Assertions that should be complied with when completing the Annual Governance Statement (AGS)

In his report Mr Rose's has identified that the during the period 2016/17 to 2019/20 the Council failed to comply with all but one of the 8 elements of the AGS.

- There are now robust internal controls in place in respect of financial management and governance within the council and these are continually being reviewed.
- The commissioning of the report by Mr Rose is evidence in itself that Ledbury Town Council recognise the importance of external scrutiny – this type of scrutiny should continue to ensure transparency and openness of the council activities.

**3. The Terms of Reference of sub-committees were inadequate, being poorly defined and not reflective of the actual practices of the Council**

- Newly drafted Terms of Reference were presented to the Annual Meeting of Council in April 2019.

- These Terms of Reference are now presented to the Annual Meeting of Council for review and provided at the first meeting of each Standing Committee at its first meeting of each municipal year for further consideration.
- Any amendments made by each committee will be referred back to a meeting of Council for approval.
- Terms of Reference for Working Parties and Task and Finish Group's are prepared by each committee respectively, and these are then referred back to each Standing Committee for their approval.
- The Council should ensure that this practice is repeated annually for all Standing Committees, Working Parties and Task and Finish Groups at their first meeting of each municipal year.

**4. The Council failed to comply with its Standing Orders in respect of its handling of complaints against Councillors**

- Standing Orders have been updated in line with the NALC Model Standing Orders and all staff and Councillors have been provided with a copy – these are reviewed at the annual council meeting and therefore all councillors should be familiar with the content of the Standing Orders
- All new councillors are provided with a New Councillor Pack following election or Co-option
- A new complaints procedure is in place for complaints against councillors from members of the public, however this complaints procedure has yet to be tested.
- A new Grievance Procedure is in place and staff should be advised to use this if they wish to make a complaint against a councillor and line managers
- More work needs to be done on how to identify and address a complaint raised by employees against councillors, i.e. whether it should be referred to Monitoring Officer as a breach of the Code of Conduct or whether it should be dealt with through the Council's Grievance process.
- With effect from December 2021 the Clerk has agreed with the Mayor that she will include an item on all council and standing committee agendas relating to the Nolan Principles to help remind councillors of their duties under the Code of Conduct that they have signed up to on becoming councillors.



**5. The Council failed to properly identify and manage the risks associated with the legal cases in which it was engaged**

- The Risk Register is reported to each meeting of the Finance, Policy & General Purpose report for a review of each section throughout the Municipal Year. This is also included on the agenda of the annual meeting of council for review by the Council in recognition that the management of risk lies ultimately with the council as a corporate body
- In the past two years, the internal auditor has commented that the Council's risk register is one of the best they have reviewed.
- The council have retained the same internal auditor for a period of three years and is currently in the process of appointing an internal auditor for the next three years – this will help provide consistency for staff and councillors
- On appointing the new internal auditors LTC should ensure that they are appointed to undertake two visits to the Council in each financial year
- The risk register is currently being reviewed by officers and once completed will provide a more comprehensive listing of risk within the council, along with suggestions to mitigate that risk

**6. The Council repeatedly failed to adequately address issues raised by External Auditors**

- All issues raised with the Clerk by the external auditors in respect of the AGAR are dealt with within the timescales given
- Each year since 2019/20 there have been improvements in the outcome of the external audit, and it is anticipated that in 2021/22 the council will be in a position to receive an unqualified audit
- A full copy of the external auditor's report is provided to council for their review and to make them aware of any actions that need to be addressed
- All issues identified by the external auditors should be recorded as noted in the minutes of council and MUST be addressed without fail going forward

**7. The terms of appointment of legal advisors were not properly reported to Council**

- Where legal advice has been sought since 2019 the decisions taken by council have been clear on what is required of the solicitor and fee proposals have been reported to council accordingly.
- Improvements have been made in what is recorded in minutes of all meetings of council and standing committees, which provided information on what has been discussed with clarity on the resolutions made
- If a standing committee is delegated to deal with a legal matter, the minutes have indicated that reference back to council should be made at all stages

**8. Councillors were not properly provided with the legal advice upon which they based key decisions**

- Council recognises their role as a corporate body and agree reference back to full council on legal matters, in fact the majority of the decisions are managed through extraordinary meetings which ensures that council are kept informed as a corporate body
- The fact that legal matters are being dealt with via council as a corporate body, means that all councillors will be provided with copies of the advice received
- Councillors are provided with reports at meetings wherever possible and this includes confidential items, except in extreme circumstances – there are concerns about confidential documents being shared with members of the public on occasions and Councillors should be aware that by doing so they could put the council at risk and themselves in respect of being reported to have breached the Code of Conduct
- Previously the council prepared “Confidential minutes”. They are now aware that there are no such things as confidential minutes – minutes of a confidential discussion should be included in the minutes of the meeting along with clear resolutions, but consideration should be given as to how much information is placed in the minutes – it should be sufficient enough to provide an overview on the subject matter, whilst still retaining the confidentiality required.

**9. Councillors were not provided the opportunity to discuss matters directly with the Council’s solicitor and, instead, had to rely on information passed to them in confidential session –**



**excess reliance was placed on verbal communication to Councillors, related in confidential meetings of Council**

- Much of this has been covered in point 8 above
- Consideration is given as to which councillors would meet with the Council's solicitors, along with the Clerk and all discussions are reported back via written confidential reports, where possible these are provided as part of the agenda pack prior to the meeting
- All copies of correspondence undertaken by solicitors on behalf of the council are provided to council in confidential session, where possible these are provided as part of the agenda pack prior to the meeting.

It is clear from the points above that Ledbury Town Council has made improvements to their governance and financial management since the Judicial Review, however it is also clear that there are still some areas that need to improve.

**Recommendation**

1. That the report provided by Mr Rose be received and noted.
2. That the conclusions within the report be accepted.
3. That arrangements be made to place the report in the public domain.
4. That the report provided by the Clerk be received, with consideration being given to a drafting an action plan to address any outstanding points in the future.

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## Corporate Governance Review Ledbury Town Council

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## Introduction

This review covers the period May 2015 (the date of the election of the current Council) until March 2019. Records reviewed include Minutes of Full Council, Standing Committee and Financial & General Purposes Committee and associated papers, Standing Orders, Financial Regulations and reports of Internal and External Auditors.

## Conclusions

1. During the period under review that Council failed to ensure a robust system of corporate governance was in place.
2. The Council repeatedly failed to comply, over a period of years, with most aspects of governance as set out in the Annual Governance Statement [Page 16-17].
3. The Terms of Reference of sub-committees were inadequate, being poorly defined and not reflective of the actual practices of the Council. [Page 20-22]
4. The Council failed to comply with its Standing Orders in respect of its handling of complaints against Councillors. [Page 23-25]
5. The Council failed to properly identify and manage the risks associated with the legal cases in which it was engaged. [Page 12-13]
6. The Council repeatedly failed to adequately address issues raised by External Auditors [Page 14-15].
7. The terms of appointment of legal advisors was not properly reported to Council [Page 7].
8. Councillors were not properly provided with the legal advice upon which they based key decisions [Page 8].
9. Councillors were not provided the opportunity to discuss matters directly with the Councils solicitors and, instead, had to rely on information passed to them in confidential session. Excess reliance was placed on verbal communication to Councillors, related in confidential meetings of the Council. [Page 8]



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**A. Council compliance with 'Proper Practices' as required by the applicable Accounts & Audit Regulations.**

"Proper Practices" is a term set out in law. The Accounts and Audit Regulations 2015 and 2011 both make multiple references to the expression 'Proper Practices' that must be complied with by Local Councils. The detailed requirements in respect of 'Proper Practices' are set out in 'The Practitioners Guide' issued by the Joint Practitioners Advisory Group (JPAG) and these have been subject to revision from time to time. During the review period there were revisions in 2016, 2018 and 2019.

In addition to the requirements in respect of Proper Practices the Accounts and Audit Regulations make specific reference in Regulations 6 and 11 to the Annual Governance Statement and the Accounting Statements. Regulations 6.4 (b) requires that an Annual Governance Statement must be prepared in accordance with Proper Practices and Regulation 11 requires the preparation of Accounting Statements, again in accordance with Proper Practices.

From a review of the records provided it appears that the Council was able to comply with the requirements for the preparation of the Annual Governance Statement and Accounting Statement as required by the Accounts and Audit Regulations.

The Accounting Statements prepared during the review period appear to have been robust. The External Auditor did raise one issue, as an "Other Matter" in respect of the 2018-19 Accounting Statement, which related to the restatement of the value of an asset, but overall it appears that the Council was able to comply with 'Proper Practices', at least in respect of the content of its Accounting Statements, for each of the years 2015-19 covered by this review. The Council was also able to give a positive response of Assertion 1, in respect of Accounting Statements for each of the years subject to this review.

It was noted that the Accounting Statements for 2017-18 were not approved until 26th July 2018, beyond the 30th June deadline, however the accuracy of these statements were not subject to challenge by the External Auditor. The late approval of the Accounting Statements did, however, make it impossible for the Council to comply with the requirements in respect of the Exercise of Public Rights, which must include the first 10 working days of July. As a consequence the External Auditor

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required a negative response in respect of the of Assertion 4, which relates to the Period for the Exercise of Public Rights, for the Annual Governance Statement in 2018/19.

It was also noted that the Accounting Statements for 2018/19 were approved by the F&GP Committee on 27th June 2019 and recommended to Full Council for approval. They were subsequently approved by Full Council on 4th July 2019, again beyond the 30th June deadline.

The Council did also broadly comply with the requirements in respect of the preparation of the Annual Governance Statement, albeit that the 2018-19 Governance Statement was signed on 4th July 2019 after the 30th June deadline. There were, however, numerous compliance issues in respect of the individual elements of the Statements over the review period. These are referred to in detail in Section F of this report.



**B. Council compliance with its own Financial Regulations, with specific focus on procurement and the awarding of contracts to suppliers and advisors.**

The Councils Financial Regulations, adopted 28th January 2016, were based on the NALC model regulations and, as such, are a form of Regulations commonly in use by many local councils. The Council has continued to use Financial Regulations based on a subsequently updated version of the NALC model regulations.

The External Auditor, in their report dated 10th July 2018 (in respect of the 2016-17 Annual Return) raised the issue of the procurement of legal services;

*"The Councils Financial Regulations (section 11.1h) require that three competitive tenders should be obtained for goods and services supplied to the Council. These requirements can only be set aside in an emergency (section 11.a). This section includes specialist services supplied by solicitors.*

*The Council employed legal advisors in connection with the judicial review and we understand that they relied upon these emergency provisions within the Financial Regulations to make the appointment without going to tender. However the Council has not been able to provide evidence that this emergency appointment was subsequently discussed or approved by the Council. "*

Regulation 11.1h referred to by the External auditor states [emphasis added]

*"When it is to enter into a contract of less than £60,000 in value for the supply of goods or materials or for the execution of works or specialist services other than such goods, materials, works or specialist services as are excepted as set out in paragraph (a) the Clerk/RFO shall obtain 3 quotations (priced descriptions of the proposed supply); where the value is below £3,000 and above £100 the Clerk/RFO shall strive to obtain 3 estimates."*

Regulation 11.a of the Councils Financial Regulations , states[emphasis added];

*"Every contract shall comply with these financial regulations, and no exceptions shall be made otherwise than in an emergency provided that this regulation need not apply to contracts which relate to items (i) to (vi) below:*

*.....*

*ii. for specialist services such as are provided by solicitors, accountants, surveyors and planning consultants;*  
*....."*

It is clear from review that the Councils Financial Regulation 11.1 a) gave specific dispensation for contracts awarded to solicitors from the three quotes requirements described in Regulation 11.1 h). Due to the express wording of 11.1 h) it is clear that the Council did not need to rely on any 'emergency

provision' contained with Financial Regulations for the appointment of solicitors as the Regulations stated that the Regulation '*need not apply*' for '*specialist services such as are provided by solicitors..*'.

It appears, from the External Auditors comments, that they may have been under the mistaken belief that 11.1 a) was intended to cover procurement under 'emergency' provisions, whereas, in fact, its purpose was specifically to state the nature of services that could be procured, in the normal course of events, without the requirements for 3 quotes as set out in regulation 11.1 h).

It is common practice for Councils to retain professional advisors, such as solicitors, without undertaking a formal tendering process, or requesting 3 quotes, and the Financial Regulations are clear that the Council would not have needed to place any reliance on the '*otherwise than in an emergency*' provision of regulation 11.1 a) to appoint solicitors. The External Auditors observation on this therefore appears to be incorrect.

Consideration of the Minutes also have failed to identify any reference to 'emergency' as the basis under which the solicitors were appointed. The External Auditors comments may therefore have either been based on a misunderstanding of the provisions of 11.1h or, perhaps, based on information provided to them during their audit which is not reflected in Council Minutes. This reliance is suggested by their use of 'we understand' when making their observation which indicates further information may have been provided to them, It is possible that the External Auditor may have formed the view that it was based on emergency provisions due to communications received from the Council during their audit work, however this could not be verified during this review.

The External Auditors more broad finding was that;

*"..the Council has not been able to provide evidence that this emergency appointment was subsequently discussed or approved by the Council"*

The decisions in relation to 'consider taking legal action' and to 'allocate a budget for such action' were based on a recommendation of the Standing Committee and resolution of Full Council. The Minutes of the Standing Committee held on 14th July 2016 made recommendations to Full Council: [Minute Ref. S.4 - 07:16]

- 1) to consider taking legal action to protect its staff from harassment.*
- 2) to allocate a budget for such action*

Subsequently at the meeting of Full Council on 21st July 2016 the Council resolved [Minute Ref. C.107-07:16];

*"To empower the Standing Committee to take legal action to protect its staff from harassment"*

*"That a budget of £10, 000 be allocated for such action"*

In retrospect the wording of the two resolutions of Full Council on 21st July 2016 was unhelpful. It clearly states to 'empower the Standing Committee to take legal action' and allocates a budget, but it makes no specific reference to the employment of legal advisors, who would, of necessity, need to be retained. The resolution also does not define the nature of any legal action or against whom the action might be taken.

The resolutions were very broad and imposed no obligation on the Standing Committee to report back to Council, or to seek further authority from Council prior to taking any legal action.

In retrospect it is clear that this resolution was both poorly drafted and ill advised. It provided very broad authority to a sub-committee without imposing any constraints on action or any need to report back to Council prior to instigating legal proceedings. Given the nature of the legal proceedings, which related to key areas of Council operations, its staffing and its Councillors, the delegation to a sub-committee, with such broad and loose authority, was clearly not appropriate.

Minutes of a subsequent meeting of the Standing Committee held on 18th October 2016 state; [Min Ref S.15 - 10.16].

*"The Mayor apprised members of legal advice received from the Council's solicitor relating to the protection of staff from harassment"*

It is clear from the above that by 18th October 2016 a solicitor had been instructed and their advice received. What is not clear is who, at the Council, had given instructions to the solicitors and who had received and considered this advice.

It was not possible, from a review of the Minutes between 21st July 2016, when Full Council delegated authority to the Standing Committee, and the meeting of Standing Committee held on 18th October 2016, to identify when the appointment of solicitors was made or who the solicitors were.

Although there is justification for holding of discussions, in respect of legal advice received, in closed session, it is unclear why the fact of the appointment of legal advisers, and the terms of their appointment, were not formally disclosed to Full Council. As the Council had previously resolved a budget of £10,000 for this purpose it would appear logical for the fact of the appointment, and the financial terms of the appointment, to have been disclosed to Council to confirm compliance with the prior resolution of the Council.



Given that the resolution of 21st July 2016 was so poorly drafted it should be noted that a Notice of Motion [C.158-12.17] on 4th December 2017 which called for council to;

‘..revert to full council all decision-making and all financial authority for the judicial review”

was defeated by vote 9-6 with one abstention. This indicates a persistent willingness by the majority of the Council to delegate these matters to the Standing Committee.

It is also pertinent to note that neither Minutes of the Standing Committee of 18th October 2016, nor Full Council of 3rd November 2016, indicate which Councillors, if any, had seen the advice of the ‘councils solicitor’. Reliance had, instead, been placed on the verbal appraisal provided by the Chair of the Standing Committee who was also the Town Mayor.

The details of what was communicated to members of the Standing Committee are, unfortunately, not recorded in the Minutes. It is therefore not clear what advice members of the Standing Committee may have received. It is not possible, given the absence of any written record, to verify that the advice provided to Councilors was either complete or accurate.

The Minutes of Standing Committee 18th October 2016 record a resolution, inter alia, (Min Ref S.15 - 10.16];

*“To ratify the solicitor's seeking of barrister advice in order to protect staff.”*

*“That Cllrs Baker and Barnes be authorised to meet with solicitors to receive further legal advice.”*

Subsequently the meeting of Full Council on 3rd November 2016, received the Minutes of the Standing Committee meeting of 18th October and approved their recommendations [Min Ref C.136 - 11.16]. It is not clear whether this meeting also received an update from the Mayor, or received a copy of any legal advice that may have been provided.

It is notable that the Full Council Minutes of 3rd November 2016 do not include any reference to a confidential section to the meeting, so it appears reasonable to presume that members of Full Council were not provided with the detailed advice that may have been provided to members of the Standing Committee. Notwithstanding the lack of legal advice disclosed to Full Council, the Council resolved by 10 votes for and 3 abstentions to approve the recommendations of the Standing Committee.

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Based on this review of the Minutes the External Auditor does appear to be correct in their observation regarding the lack of any discussion or approval by Council of the appointment of the solicitors.

### **C. Council strategic financial management, including the process for setting budgets and Council Tax.**

The 'Committee Functions' schedule [See Section I], which appears to represent the Council's approved scheme of delegation, does not refer to financial management, the setting of budgets, or the proposal of the precepts as matters for the Finance & General Purposes (F&GP) Committee. In practice, however, from a review of the Minutes of the Finance and General Purposes Committee, it appears that this function rested with F&GP.

The setting of the precept for the Council was carried out through the F&GP Committee and Full Council. The process of setting the precept involved the F&GP committee considering the budget, making a determination of what the precept required would be, and making a recommendation to the Full Council. This arrangement reflects what is common practice for Councils of a similar size to Ledbury Town Council.

Minutes of Full Council meetings record approval of both the budget and precept.

Year	Date of Council approval of budget and precept
2016/17	28/01/2016
2017/18	02/02/2017
2018/19	01/02/2018

Minutes for the years 2017, 2018 and 2019 record that the F&GP Committee regularly reviewed a number of financial reports including;

- Listings of invoices for payment
- Record of receipts and payments
- Balance Sheet and Trial Balance
- Bank statements and bank reconciliations
- External and Internal Audit reports

Progress against the Budget was reviewed on a quarterly basis using reports from the Councils Rialtas accounting system. The Minutes of F&GP meeting record review of actual income and expenditure against budget, there is also record of Councillors review and questioning in relation to the budgetary reports. There is also reference in the Minutes to detailed examination of virements and the 'rollover' of budgets and the need for the Council to discuss these with the Internal Auditor.



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Although Internal Auditors often hold an accountancy qualification it is unusual for a Council to need to refer such issues to them as they would normally be a matter for the Councils Responsible Financial Officer. This may suggest that the Council, either through its Officers or Councillors, may not have had sufficient training to exercise more advanced forms of financial management.

From a review of the Minutes it appears that the Council, through the F&GP Committee, did generally exercise good oversight of the financial affairs of the Council.

#### **D. Council Risk Management arrangements.**

The Councils 'Committee Functions' schedule [See Section I] does not refer to the responsibility for Risk Management. In practice the management of Risk rested with the F&GP Committee, although, as a specific item of the Annual Governance Statement, overall responsibility rests with Full Council.

Minutes of the F&GP Committee record regular, detailed discussion of the Councils Risk Register with the Committee reviewing in some detail the specific areas of risk and the associated weightings of these risks.

The Council Risk Management arrangements were subject to Internal Audit to the extent that the Internal Auditor was required to undertake such tests as were necessary to give a response to Internal Control Objective C;

*"This smaller authority assessed the significant risks to achieving its objectives and reviewed the adequacy of arrangements to manage these".*

In each of the years subject to this review the Internal Auditor gave a positive response to this assertion confirming that, in the view of the Internal Auditor, a review and assessment of risks had been undertaken.

It should be understood that in giving a response to this Control Objective the Internal Auditor was not expressing any opinion on the adequacy of any risk management arrangements the Council may have had in place, they were simply confirming that the Council undertook an 'assessment' of risk. It would be wrong to draw any conclusion on the adequacy of the Council's risk management arrangements by reference to the response to Objective C by the Internal Auditor.

It is notable, from a review of the F&GP committee Minutes, that there is no specific reference in Minutes to any risks associated with the legal disputes in which the Council was actively engaged. Given the nature of the disputes, which impacted both staff and Councillors, and given the clear references to this in External Auditor reports, the failure of the F&GP committee to address this appears to be a serious omission.

It is, of course, possible that the delegation by Full Council of matters relating to the legal disputes to the Standing Committee resulted in a compartmentalising of this matter so that members of the F&GP committee did not consider that this fell under their remit, but there is nothing to support this conclusion in the Minutes.

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The failure for this risk to be considered by F&GP was, without question, a serious failing of the Councils risk management arrangements however, given the approach of the Council, as a body, to the legal issues, it appears very unlikely that an assessment of risk by the F&GP Committee, which included the identification of the risk associated with the legal action, would have resulted in any significant change in the Councils approach.

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## **E. Internal and External Audit arrangements.**

Local Councils are subject to audit under the 'light touch' audit regime. Under this regime the Council is subject to both an Internal Audit and External Audit.

The Council's External Auditor was previously appointed by central government under a form of regional contract in which all local Councils in a specific area were subject to External Audit by one nominated firm. Following the abolition of the Audit Commission since April 2017 the External Auditors contracts have been awarded through SAAA Ltd (Smaller Authorities Audit Appointments).

In practical terms this has made little difference to individual Local Councils as they continue to face External Audit on almost identical terms as existed under the Audit Commission.

The Town Council has had a number of different Auditors over the years. The External Auditor has changed based on the award for contracts through the relevant national body. The Internal Auditor has been subject to change more frequently.

<b>Year</b>	<b>External Auditor</b>	<b>Internal Auditor</b>
2014/15	Grant Thornton	Luke Keegan ACMA
2015/16	Grant Thornton	Sarah Jackson
2016/17	Grant Thornton	Auditing Solutions
2017/18	PKF Littlejohn	Auditing Solutions
2018/19	PKF Littlejohn	Ian Selkirk
2019/20	PKF Littlejohn	Ian Selkirk

The practice at the Council was for reports from both the Internal and External Auditors to be reviewed through the Finance & General Purposes Committee although, once again, this is a role not specified in the 'Committee Functions' schedule.

There is regular reference to both Internal Audit and External audit in the Minutes of the F&GP Committee over the period 2016-2019 and the Committee has received and noted these reports. There are also references to the quality of the work of the Internal Auditor which indicates that, at least to some degree, the F&GP committee was conscious of the work being undertaken.

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It is notable, given the number of issues raised each year by the External Auditor, that the Minutes of the meetings of F&GP do not record any detailed discussion of the report of the External Auditor and the actions required to address these.

The Minutes of a meeting of F&GP held on 10th May 2018 record that

*"F.44 - 05.18 PUBLIC PARTICIPATION*

*Cllr Harrison, attending as a member of the public, emailed all Cllrs prior to the meeting, to express his concern that the Internal Audit (item 8.1) makes no mention of the Judicial Review"*

There is no response to this recorded in the Minutes.

Subsequently the Minutes of the F&GP meeting held on 7th June 2018 refer to

*"Need to find out the contract for the Internal Auditor given the perceived gaps in reporting"*

What these 'perceived gaps' might be is not recorded in the Minutes.

What is apparent from the Minutes is that questions were being raised, either directly to the External Auditor (these are referred to in the Minutes of Full Council held 6th April 2017 as an "unwarranted challenge") or by individual members of the Council in respect of the Internal and External Audits of the Council. There were clearly some level of concern in respect of the audit of the Council generally, but this was not expressed as an overall concern of the Council in Council Minutes.

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## Corporate Governance

### **F. Council compliance with the requirements of the Annual Governance Statement**

Every local Council in England, irrespective of size, is required to complete an Annual Governance Statement (AGS). This is a series of 8 Assertions which relate to how the Council has met its responsibilities during the year subject to Audit. Councils which act as Trustee must also make a 9th Assertion in respect of their obligations as Trustee. It is understood the Ledbury Town Council do not act as Trustee.

From a review of prior years AGS completed by the Council it is apparent that there was a persistent issue with the Council and its compliance with its governance obligations. Remarkably, over a four year period, 2016/17 to 2019/20, the Council failed to comply with all but one of the 8 elements of the AGS. The sole exception being in relation to Assertion 1 which relates to financial management.

It is notable that in two areas, the Exercise of Public Rights and the Council's response to issues raised by the External Auditor the Council failed to comply with its obligations in 3 of the 4 years. In three of the four years the External Auditor was also obliged to report that the Council had given positive responses to Assertions when it should not have.

Although it is understood that the Council was embroiled with a legal dispute which undoubtedly consumed much time and resources, it is difficult to understand how this should have impacted on matters such as the Exercise of Public Rights [Assertion 4], or the maintenance of an 'adequate and effective' Internal Audit [Assertion 6].

Irrespective of other matters in which the Council became embroiled over the period of this review, the widespread and persistent failure by the Council to meet its basic governance obligations, as set out in the Annual Governance Statement, would, of itself, indicate an overall failure of corporate governance.



## Ledbury Town Council - Annual Governance Statements Negative responses

Assertion	2019/20	2018/19	2017/18	2016/17*
1. We have put in place arrangements for effective financial management during the year, and for the preparation of the accounting statements.				
2. We maintained an adequate system of internal control including measures designed to prevent and detect fraud and corruption and reviewed its effectiveness.			X	
3. We took all reasonable steps to assure ourselves that there are no matters of actual or potential non-compliance with laws, regulations and Proper Practices that could have a significant financial effect on the ability of this authority to conduct its business or manage its finances.			X	(a)(see below)
4. We provided proper opportunity during the year for the exercise of electors' rights in accordance with the requirements of the Accounts and Audit Regulations.	(c) see below	X	(b) see below	
5. We carried out an assessment of the risks facing this authority and took appropriate steps to manage those risks, including the introduction of internal controls and/or external insurance cover where required.			X	
6. We maintained throughout the year an adequate and effective system of internal audit of the accounting records and control systems.	X			
7. We took appropriate action on all matters raised in reports from internal and external audit.	(c) see below	X	X	
8. We considered whether any litigation, liabilities or commitments, events or transactions, occurring either during or after the year-end, have a financial impact on this authority and, where appropriate, have included them in the accounting statements		X	X	

(a) In 2016/17 the Council gave a positive response to all items on the Annual Governance Statement. The External Auditor subsequently advised that they considered the Council should have responded 'No' to Assertion 3.

(b) In 2017/18 The External Auditor subsequently advised that they considered the Council should have responded 'No' to Assertion 4

(c) In 2019/20 The External Auditor subsequently advised that they considered the Council should have responded 'No' to Assertion 4 and Assertion 7

1665

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### **G. Council compliance with relevant Powers.**

Local Councils generally can only undertake activities for which they have a specific legal 'power'. Subsequent to the Localism Act 2011 Councils may extend their powers by adopting the General Power of Competence. This effectively gives a Council the legal power to undertake any activity unless there is a specific legal prohibition.

Following the Town Clerk gaining the CiLCA 2013 qualification Ledbury Town Council adopted the General Power of Competence at a meeting held on 11th May 2017 Minute Ref [C.65 – 05.17].

From a review of records there is no indication that the Town Council has acted beyond its powers during the period of review.

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## **H. The implementation of, and compliance with, Standing Orders**

The Council Standing Orders adopted in 2016 are very closely based on NALC Model Standing Orders and as such these mostly relate to the arrangement for the conduct of meetings. Much of the content of the Model Standing Orders simply reflects matters that are required by legislation, such as the Local Government Act 1974.

On review of the Minutes there does not appear to be any specific instance of the Council failing to comply with its Standing Orders in respect of the conduct of its meetings.

There was significant non-compliance in respect Section 14 of the Council Standing Orders and these are set out in detail in Section J of this report.



## **I. Council delegation to Committees and Councillors**

The Councils framework for the delegation set out in Section 5 J of the Councils Standing Orders adopted 28th January 2016 (Minute Ref. C.21 - 1.16) states;

*"Following the election of the Chairman of the Council and Vice-Chairman of the Council at the annual meeting of the council, the business of the annual meeting shall include:....*

*v) Review of delegation arrangements to committees, sub-committees, staff and other local authorities;*

*vi. Review of the terms of reference for committees;*

*...."*

Subsequently the Annual Meeting of the Town Council held on 12th May 2016 (Minute Ref. C.65 - 05.16) confirmed the Council;

*"reviewed the Council's Committees and functions thereof."*

*and*

*"RESOLVED: That the Town Council operate:- Three main committees:-*

*Economic Development & Planning, with delegated authority to examine and comment upon Planning Applications*

*Environment & Leisure*

*Finance & General Purposes, with delegated authority to examine and approve payments on behalf of Council*

*Plus a Standing Committee for administrative matters.*

*And, that the functions of each committee, be approved and adopted."*

The Councils Standing Orders 4 d) states

*"d The council may appoint committees as may be necessary, and:*

*i. shall determine their terms of reference;*

*..."*

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The agenda for the May 2016 meeting was supported by a one page document which lists some of the functions of the Committees and some details of delegated authority. This document does have a formal heading referring to 'functions' rather than 'terms of reference' but it appears to be the 'terms of reference' on which the Council applied Standing Order 4 d) i.

The Annual Meetings of the Council in 2017 and 2018 repeat the same resolution, word for word, and the same supporting 'functions' paper was used in 2018 as in 2016. It was not possible to locate the 2017 supporting paper during this review but it seems reasonable to presume that it was in the same format as 2016 and 2018.

There are specific instances where the Council delegated authority to sub-committees for a particular issue, for example the meeting of Full Council on 17th February 2017 delegated authority to the Standing Committee to appoint consultants to carry out the Operational Review. This appears to have been carried out on an ad hoc basis and the 'functions' schedule does not appear to have been updated to reflect this.

Although there is no prescribed format for a Committees Terms of Reference for local Councils it is common for them to extend to several pages, which will detail, amongst other things, the determination of membership of the committee, frequency of meetings, purpose of the committee and any delegation of authority. In addition to formal Terms of Reference it is also common for Councils to have in place a Scheme of Delegation which sets out particular delegations of powers to Officers (normally the Clerk) and to committees.

From a review of records it does not appear that a formal scheme of delegation was in place at Ledbury Town Council during the period of this review. The Terms of Reference of Committees and any Delegation to them were both, presumably, dependent on the resolution passed at each annual meeting and the supporting 'functions' schedule. The Annual Meeting of the Council held on 9th May 2019 deferred consideration of the Draft Terms of Reference to F&GP and it was considered by F&GP on 23rd May 2019.

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As noted previously in this report the 'Committee' Function' schedule did not adequately set out the responsibility of committees and, in practice, the activities of Committees differed substantially from those set out.

**J. Council / Councillors compliance with the Code of Conduct (this will not seek to repeat any examination of matters previously addressed through the Courts)**

The Council Minutes of 21st June 2018 (Minute Ref. C.92-06.18) which considered the adoption of the Herefordshire Council Code of Conduct stated these had;

*'never been formally adopted by Ledbury Town Council'.*

This wording is somewhat confusing as the Full Councils Minutes of 28th January 2016 (C.21 - 1.16 iii) specifically refer to the Herefordshire Council Code of Conduct. The Minutes of 21st June 2018 may, perhaps, refer to a specific council resolution to adopt the updated Herefordshire Council Code of Conduct which had been subject to review since 2016, although this is not stated. In any case what is clear is that the Council had in place a formal Code of Conduct since at least 2016.

The Councils Standing Orders (2016) reference the Code of Conduct in a number of areas, specifically in Section 14 "Code of conduct complaints".

14 a) states

*"Upon notification by the Unitary Council that it is dealing with a complaint ..".*

It is clear from this that the Council's adopted Standing Orders recognised the role of the Unitary Authority (and by implication the Monitoring Officer) in handling such complaints. It is unclear, from a review of Minutes, how the Council distinguished between the complaints raised through the Grievance Procedure, based on which it subsequently decided to impose sanctions on Councillors, and complaints that should properly have been handled through the Code of Conduct and been referred to the Monitoring Officer

It is particularly notable that the Minutes of Full Council 5th May 2016, in which a series of sanctions were imposed on Councillors, makes no reference at all to the Code of Conduct, despite citing "bullying" as one of the considerations, which is a matter specifically referred to in the Code of Conduct adopted by the Council the previous January.



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The Annual Meeting of the Council held on 15th May 2016 records (Minute Reference C.73- 05.16 ) a decision by the Council to refer two Councillors to the Monitoring Officer "on for behaviour likely to bring the Town Council into disrepute". This indicates that the Council had an appreciation of the role of the Monitoring Officer in dealing with complaints against Councillors.

It is not clear how the Council distinguished between matters that were to be handled by the Monitoring Officer and matters that it could handle itself. The Minutes of the Standing Committee of 6th March 2017 state;

*"The Mayor reminded members of the open letter received from the Monitoring Officer which clearly states the Herefordshire Council investigation was only dealing with allegations of breaches of the Members Code of Conduct, and not into Ledbury Town Council staff or its processes."*

It is clear from the above that the approach of the Council to the issues raised in the Grievance process was to seek to distinguish them from the Code of Conduct and the provisions of section 14 of its Standing Orders. In doing so the Council did not, however, formally identify under what basis it could take action against Councillors.

It is notable that neither the Councils Standing Orders nor the 'functions' approved at the Annual Meeting refer to any particular power, or delegation of power, in respect of complaints that may be made against Councillors.

It is notable that the only reference to sanctions upon Councillors is contained in 14 d) of the Councils Standing Orders (adopted January 2016) which refers specifically to a decision by the Monitoring Officer.

*"Upon notification by the District or Unitary Council that a councillor or non councillor with voting rights has breached the council's code of conduct, the council shall consider what, if any, action to take against him/her. Such action excludes disqualification or suspension from office."*

When the Monitoring Officer advised the Council that complaints which were subject to review had not been upheld, as recorded in the Minutes of a Council meeting on 20th July 2017, the decision

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appears to have made little impact on how the Council sought to deal with the sanctions it had imposed on Councillors.

In retrospect it is clear that the Council failed to fully consider whether it should have sought to address any complaint raised against Councillors by reference to the Code of Conduct and determined, at an early stage, that these could be handled through the Council's own internal Grievance procedure.

This failure to properly identify the complaints as Code of Conduct issues or, perhaps more accurately, the action of the Council in distinguishing complaints raised against councillors by employees from other types of complaints, was a serious error that was to lead ultimately to the adverse finding of the judicial review.

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**K. Review of the process of the calling and holding of meetings including the drafting and circulation of agendas, preparation and circulation of supporting documents, and the recording and approval of Minutes.**

As part of this review a questionnaire was circulated to Councillors which sought to establish what arrangements were in place, during the period of this review, for the calling and holding of meetings and the circulation of agendas and supporting documents. Due to the limited number of current Councillors who also served during the period of this review it was not possible to form general conclusions on the adequacy or otherwise of the practices in place.

There was, however, no indication from the questionnaires received that Councillors had not properly received notice of meetings or supporting agenda and papers.

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## **L. Training and development of Councillors and Staff**

As part of this review a questionnaire was circulated to Councillors which sought to establish what training and induction Councillors had been provided. Due to the changes in the composition of the Council over time there are few current Councillors who were also Councillors during the period of review. As a consequence it is not possible to form a reliable view as to the general experience of Councillors over the period.

The limited feedback received has not identified any specific failure in the training or induction of Councillors.

The Town Clerk had also obtained the necessary CiLCA qualification which enabled the Council to adopt the General Power of Competence. This gives a reasonable level of assurance as to the level of training of the key member of the Council's staff.

Based on this it is reasonable to conclude that there was no systemic failure of the training and development of Councillors or staff during the period of review.



