

Regulatory and Audit Committee 13 November 2014

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Regulatory and Audit Committee

Title:	Statutory Officer Reports
Date:	13 November 2014
Author:	Chris Williams, Chief Executive
Contact officer:	Ian Dyson 01296 383070
Local members affected:	N/A

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Summary

At the Regulatory and Audit Committee meeting on 23 September 2014, members, with reference to a letter sent from the Director for Children's Services to the Chief Executive, questioned the process for the escalation of issues and concerns raised by officers who hold statutory positions; and, whether they should be received by the Regulatory and Audit Committee.

This report sets out the requirements on statutory officers to formally report matters and to whom.

Recommendation

The Committee is **recommended** to note the report

Supporting information to include the following if a decision is being requested:

Resource implications

There are no resource implications

Legal implications

There are no legal implications

Other implications/issues



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N/A

Feedback from consultation, Local Area Forums and Local Member views (if relevant)

N/A

Background Papers

None

Escalation Process for Statutory Officer Reports

Introduction

1. At the meeting of the Regulatory and Audit Committee on 23 September 2014, it was raised that the Leader of Council understood a letter, referred to at the meeting as a "statutory letter", sent from the Director for Children's Services (DCS) to the Chief Executive in January 2014, had come to the Regulatory and Audit Committee. It was understood the letter was highlighting risks regarding capacity in Children's Social Care.
2. At the request of the Chairman enquiries were made prior to the meeting, and it was confirmed that a letter dated 11 January 2014 had been emailed to the Chief Executive from the DCS. The Chief Executive confirmed the receipt of the letter, and that subsequent discussion had taken place with the DCS resulting in agreement for the deployment of additional resources; the letter had not been referred to the Regulatory and Audit Committee. The Chief Executive has since, on request, provided a copy of the letter to the Chairman.
3. The Committee requested a report answering the following questions:
 - Should the letter have been referred to Regulatory and Audit Committee?
 - What is the process for "statutory letters" from the statutory officers?
 - Why had the Regulatory and Audit Committee not been alerted to the emerging issues through the risk management process?

Background

4. There are six statutory officers at Buckinghamshire County Council:
 - Head of Paid Service (Chief Executive)
 - Monitoring Officer (Service Director - Legal)
 - Chief Finance Officer (Service Director - Finance and Commercial Services)
 - Director of Children's Services
 - Director of Adult Social Care
 - Director of Public Health

Should the letter have been referred to the Regulatory and Audit Committee; and, What is the process for "statutory letters" from Statutory Officers?

5. These two questions can be taken together. Of the six "statutory officers" there are only two that have as part of their statutory responsibilities a requirement to report concerns to the Council and Cabinet:

Monitoring Officer

Section 5 of the Local Government and Housing Act 1989 requires the Monitoring Officer, after consulting with the Head of Paid Service and Chief Finance Officer where practicable, to report to the full Council, or to the Cabinet in relation to an Executive function, if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

Chief Finance Officer

Section 114 of the Local Government Finance Act 1988 requires the Chief Finance Officer, after consulting with the Head of Paid Service and the Monitoring Officer, where practicable, to report to the full Council, or to the Cabinet in relation to an Executive function, and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

6. Were it ever necessary for these officers to issue either a section 5 notice or a section 114 notice, the escalation process is clear, they would be issued to all Councillors. It would not be necessary for a separate escalation to the Regulatory and Audit Committee; however, given the circumstances that would result in such a notice, it would be reasonable to expect the Regulatory and Audit Committee to be involved in providing independent oversight of any resulting investigations.
7. For the other four statutory officers, their roles are not regulatory. The roles and responsibilities are defined in statute, but the statute refers to the reporting lines within the organisation, for example in the case of a Director for Children Services they should report to the Chief Executive. There is nothing in the statute that requires these officers to escalate any concerns over the operation of their role through a statutory notice.
8. With regard to the letter written by the DCS to the Chief Executive in January 2014, this was not therefore a "statutory" letter. It was a letter formally setting out issues the DCS had with the management of children's services to the Chief Executive to inform a future discussion and give notice that action was required. This is consistent with the operational management structure at the County Council, and consistent with the statutory role of the DCS. It is not part of the Council's process for operational matters to be referred as a matter of course to the Regulatory and Audit Committee.
9. In compiling this report, the escalation of the issues raised in the letter to the Cabinet Member and Leader of the Council has not been looked at; however it is the responsibility of Director's and the Chief Executive to provide timely briefings to their Cabinet Member and Leader respectively on operational and strategic issues as appropriate.

Why had the Regulatory and Audit Committee not been alerted to the emerging issues through the risk management process?

10. The strategic risk register which is regularly presented to the Risk Management Group has consistently highlighted children's social care as high risk; however what this has highlighted is that where risks are accepted as high, the movement of risk is not obvious, so concerns over the systems and controls designed to manage the risks will not be evident.
11. This has been discussed with COMT and will be addressed within the new risk management strategy to be implemented as part of the Future Shape Programme.

Ian Dyson

Chief Internal Auditor

November 2014