



AGENDA

SCRUTINY COMMITTEE MEETING

Date: Thursday, 21 October 2021

Time: 7.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, Kent, ME10 3HT*

Membership:

Councillors Lloyd Bowen (Chairman), Steve Davey, Mike Dendor (Vice-Chairman), Oliver Eakin, Tim Gibson, James Hall, Carole Jackson, Denise Knights, Pete Neal, Hannah Perkin, Ken Pugh and Corrie Woodford.

Quorum = 4

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Information for the Public

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Link to the meeting: TO BE ADDED

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The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.

The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second closest emergency exit route is, in the event that the closest exit or route is blocked.

The Chairman will inform the meeting that:

(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park. Nobody must leave the assembly point until everybody can be accounted for and nobody must return to the building until the Chairman has informed them that it is safe to do so; and

(b) the lifts must not be used in the event of an evacuation.

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It is important that the Chairman is informed of any person attending who is disabled or unable to use the stairs, so that suitable arrangements may be made in the event of an emergency.

2. Apologies for Absence and Confirmation of Substitutes

3. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary Interests (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the meeting while that item is considered.

Advice to Members: If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

4. Erroneous Planning Decisions

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Issued on Wednesday, 13 October 2021

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**Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

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SCRUTINY COMMITTEE		Agenda Item:
Meeting Date	21 October 2021	
Report Title	Planning Support – Erroneous Planning Decisions	
Cabinet Member	Cllr Truelove – Leader (Portfolio Holder Shared Services) Cllr Baldock – Portfolio Holder Planning	
SMT Lead	Stephen McGinnes Director Shared Services Larissa Reed – Chief Executive	
Recommendations	1. That scrutiny note the contents of the report including the audit report, timeline and action plan	

1 Purpose of Report and Executive Summary

- 1.1 This report follows the report considered by Scrutiny Committee on September 23, 2021. The report sets out details of the Audit Investigation and the timeline of events.

2 Background

- 2.1 On 19 August 2021 the councils published six planning notices by mistake. The six, which had all the outward signs of genuine decision notices, were part of system testing and never intended for publication.
- 2.2 The councils had not, in fact, decided these six applications. Some of the language used was transparently not that expected of genuine notices.
- 2.3 The councils removed all six notices on the same day as they came to attention. However, following later legal advice, the councils came to understand that because the notices met those outward signs of authenticity they would stand as lawful decisions. Therefore, the councils would need to republish the decision notices and keep them on display while they began the legal filings necessary to get the notices quashed. The re-publication has attracted significant media coverage.
- 2.4 The council undertook an investigation, led by the Head of Audit to ensure that lessons are learned and the process improved going forward. The report can be found at Appendix 1.
- 2.5 The report determined that the reasons for the issue date back to 2018. On 4 September 2018, MK ICT in error duplicated the system configuration responsible

for the interface between the Planning System (Uniform), the Document Management System and Public Access.

- 2.6 With MK ICT unaware of the duplication there was a crucial step missing from their procedure notes when copying details from the Live planning system into the Test system. This resulted in the Test system being handed over by MK ICT to MK Planning Support being configured in a way that left it vulnerable to unintentional publication.
- 2.7 There have been at least four periods of testing since 2018 and each one had the risk of erroneous decisions being printed; however the issue only occurs when the print function is used, and this is the only case where this happened.
- 2.8 A diagram of what should happen and what did happen as part of the testing is shown at appendix 2 (the green line is the correct process; the red line is what happened in reality).
- 2.9 With the testing taking place in an environment where MK Planning Support believed the likelihood risk of publication was zero, the inappropriate content was entered on the fully grounded belief that no-one else would ever see. The comments did not seek to express any view on the applications.
- 2.10 Further to the Audit investigation, an action plan has been agreed with both councils. (Appendix 4) This is now being implemented.

3 Appendices

- Appendix 1 - Audit Report
- Appendix 2 - Diagram of process
- Appendix 3 - Timeline of incident
- Appendix 4 - Action plan following investigation

4 Background Papers

Report to Scrutiny Committee 23 September 2021

MISTAKEN PLANNING DECISIONS

INVESTIGATION REPORT

23 September 2021

Code	X22-IV01	Service	Mid Kent Planning Support
Lead Investigator	Rich Clarke	Director	Steve McGinnes
HR Lead	Tracy Simler		



Summary Report

The Incident

1. Between them, Swale and Maidstone Borough Councils publish ten to twenty planning decision notices each day, more than 4,000 each year. On 19 August 2021 the councils published six by mistake. These six, which had all the outward signs of genuine decision notices, were part of system testing and never intended for publication.
2. The councils had not, in fact, decided these six applications. The language used was transparently not that expected of genuine notices. In the example most prominently featured in later reporting, for example, one application received a refusal decision because of being “proper whack”.
3. The councils removed all six notices on the same day as they came to attention. However, following later legal advice, the Councils came to understand that because the notices met those outward signs of authenticity they would stand as lawful decisions. Therefore the Councils would need to republish the decision notices and keep them on display while they began the legal filings necessary to get the notices overturned. The re-publication has attracted significant media coverage.

This Report and Investigation

4. The Mid Kent Services Director first told me (Rich Clarke, Head of Audit Partnership) of this issue on 31 August. After researching the investigatory capacity available at short notice within the Audit Partnership, I opted to personally lead the investigation.
5. Mid Kent Human Resources have provided administrative support during the investigation. On 2 September the investigation began, working at first to the broad brief discussed on 31 August.
6. The Mid Kent Services Director provided the final formal brief for the investigation in an email on 16 September. I have therefore prepared this report mindful of the following direction:

“To verify the actions that led to the erroneous issue of the notices, the controls and suitability of the controls around the process, the nature of any officer or control failure and how that contributed to the outcome.”

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[The report should also include] any recommendations in terms of change needed to safeguard the process going forward and need for further consideration through the Council's disciplinary process.

Whilst you may want to comment on actions taken after the discovery or incidental findings, such as other risks or areas we may want to consider going forward [they are not directly] within scope”.

7. I was also asked to consider the extent, if any, the fact the councils share governance of the services involved might have influenced events.

Context

8. Maidstone Borough Council (MBC) and Swale Borough Council (SBC) are each planning authorities as set out in Part I of the Town And Country Planning Act 1990 (the Act). Part II of the Act empowers planning authorities to grant or refuse permission for development within their boundaries. Much of the specific rules for judging applications for development appear in secondary legislation or the planning authority's own procedures. Case law shows that authorities cannot issue a second decision on one application¹ and that applicants can rely on published decisions².
9. MBC and SBC have each kept sovereign control over the decision making and technical side of their planning work. However in 2014, with Tunbridge Wells Borough Council (TWBC) the councils decided to combine the administrative side of their planning work within a shared service, known as Mid Kent Planning Support (MKPS). TWBC withdrew from the partnership in 2016.
10. Among other responsibilities, MKPS validates planning applications, collects and administers associated payments and publishes relevant information through a shared Planning Portal. Through the Portal, members of the public can view planning applications and associated documentation and make comments. The Portal also houses the final planning decision notices.
11. In performing its tasks MKPS use a software product called Uniform created and supported by a company called Idox. Uniform is a widely-used software package that can manage a wide variety of local authority roles.

¹ R v Yeovil Borough Council ex parte Trustees of Elim Pentecostal Church (1972)

² R v Wirral MBC (2019) (Thornton Hall)

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12. Aside from Development Management, MBC and SBC also use modules of Uniform to manage their licensing, land charges and gazetteer management for example. MKPS has used Uniform throughout its existence as a service.
13. Mid Kent Information and Communication Technology Services (MKICT) provide local Uniform support and administration. MKICT is a shared service of MBC, SBC and TWBC that began around a decade ago.
14. A Mid Kent Services Director who works jointly for all three Mid Kent authorities oversees the services' performance and governance. A Service Board (including section 151 officers) and an Executive Board (including Chief Executives) also meet each quarter to examine performance and cost of Shared Services. The MKS Board (including Council Leaders) provides overall oversight of delivery and direction of Mid Kent Services. All decision making remains with individual sovereign authorities.

Summary Findings

15. The systemic cause of this incident comes from all participants significantly undervaluing the risks involved. As a result, the councils had not developed secure enough surrounding controls to prevent the risk event from happening.
16. MKICT had an incomplete understanding of the Uniform system it oversees. Specifically, MKICT was unaware of all the ways Uniform interfaced with external systems, including the Planning Portal. This knowledge gap left a crucial step missing from MKICT's procedure notes. It meant the Test system handed over by MKICT was, unknown to MKPS, configured in a way that left it vulnerable to unintentional publication. The Test system was similarly vulnerable on previous occasions but those did not, for reasons that are unclear, obviously lead to any published errors.
17. The specific cause was the, seemingly unintentional, copying of a single line of configuration command code from one part of the Live system to another more than three years ago. This command directed Uniform to publish automatically all documents marked for the public as MKPS saved them into the Live system.
18. This copied another command already linked to the Live system. Therefore, with the Live system performing exactly as expected the command remained unnoticed.
19. MKICT then, while faithfully following procedure notes, unwittingly mirrored this code into the Test system when creating a 'snapshot' copy for testing. By this action, unknown to all at the time, the Test system handed over contained a command to automatically publish documents to Live.

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20. MKPS had almost no controls governing planning or performing this system testing. Such instructions that existed were brief, informal and not documented. There is also doubt over whether the testing, as designed, could have achieved its objectives.
21. The testing took place in an environment where the officer believed the likelihood risk of publication was zero. The comments were a flippant, off-the-cuff, reaction to undertaking a menial task during an extended period of largely isolated home-working. The officer wrote them solely for personal amusement and with a fully-grounded belief that no-one else would ever see. The comments did not seek to express any view on the applications. Publication was a result of the Test system's mistaken configuration; something the officer could have had no knowledge of.
22. The first response when MKPS and MKICT became aware of publication was immediate removal. This suggests little appreciation that by publishing the notices, the councils had reached a legal decision that would need a court decision to undo. It also suggests a belief that removing the notices would close the matter. Why that belief persisted is beyond the scope of this investigation but will feature as a separate line of enquiry.
23. Doubtless there are several officers who, knowing what they know now, would not have acted as they did. As an overall headline my view is that, seen alone, the actions are minor aberrations or omissions with limited if any individual culpability. This episode springs in the main from concatenating these actions or omissions as they all fell into place on the morning of 19 August.
24. No organisation that employs people can ever be immune entirely from error. I do not believe the errors in this incident are unique to or any more likely to happen in a shared environment. I have not seen any controls present in a sovereign service that would have removed the risk of similar errors.

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Recommendations

25. In keeping with the brief, I have restricted recommendations to those relevant for safeguarding this process.

Recommendation and <i>Rationale</i>	Possible Lead Officers
<p>1. Add a suitably evaluated risk of mistaken publication to risk registers.</p> <p><i>Highlighting this risk on continuing records in this way will help ensure the documented efficacy of controls and create a way to reflect development of the risk and controls. Specifically, this risk should reflect any future mistaken publication have broader scope than Planning.</i></p>	MKS Director
<p>2. Develop and document a clearer understanding of how the council manages and controls systems with public interface.</p> <p><i>Although MKICT have already corrected procedures to address the (now) known error, the lack of knowledge may still leave Uniform and other systems vulnerable.</i></p> <p><i>The Councils should invite MKICT to report to senior management either that they are satisfied they understand all interface configurations or to set out the further work needed to reach that assurance.</i></p>	Head of MKICT
<p>3. Formalise controls around system testing.</p> <p><i>The testing carried out by MKPS was lax in both planning and execution. Using experience from drawing up test strategies, audit can advise on a possible form or guidance to help support services plan and perform testing that achieves objectives and limits risk. This might include guidance on testing approach, sample sizes, the use of dummy records and proper phrasing for user entered text. If the councils go on to adopt such an approach, MKICT could act as reviewers in considering and signing off on testing approaches for systems they govern.</i></p>	Head of MKICT Head of Audit Partnership

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Recommendation and <i>Rationale</i>	Possible Lead Officers
<p>4. Create procedures to set out expectations following any mistaken publication within planning.</p> <p><i>This incident showed significant misunderstandings and lack of clarity in how to deal with mistaken publication. MKPS should work with relevant planning services to develop a clear understanding of how to deal with any future incidents.</i></p>	<p>MKPS Manager</p> <p>MBC Head of Planning</p> <p>SBC Head of Planning</p>

Standards and Independence

26. Mid Kent Audit work in full conformance with *Public Sector Internal Audit Standards*. The *Standards* include a specific duty to act always with independence and objectivity. We must disclose any threats, in fact or appearance, to that independence and describe how we manage those threats.
27. Mid Kent Audit shares a Director with MKPS and MKICT and is also a Shared Service. I have managed any independence threat that shared organisational position presents by ensuring oversight of this report and its findings belongs also with Chief Executives at both authorities.
28. I have also considered the agreed *Audit Charter*. The *Charter* guarantees audit independence. This includes an unqualified right of direct reporting to Senior Officers and Members if, in the view of the Head of Audit Partnership, such direct reporting becomes necessary.
29. I am satisfied I have been able to investigate and report free from inappropriate influence and with full cooperation of those engaged. I have no concerns to report on any threats to independence and objectivity.

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Report Distribution

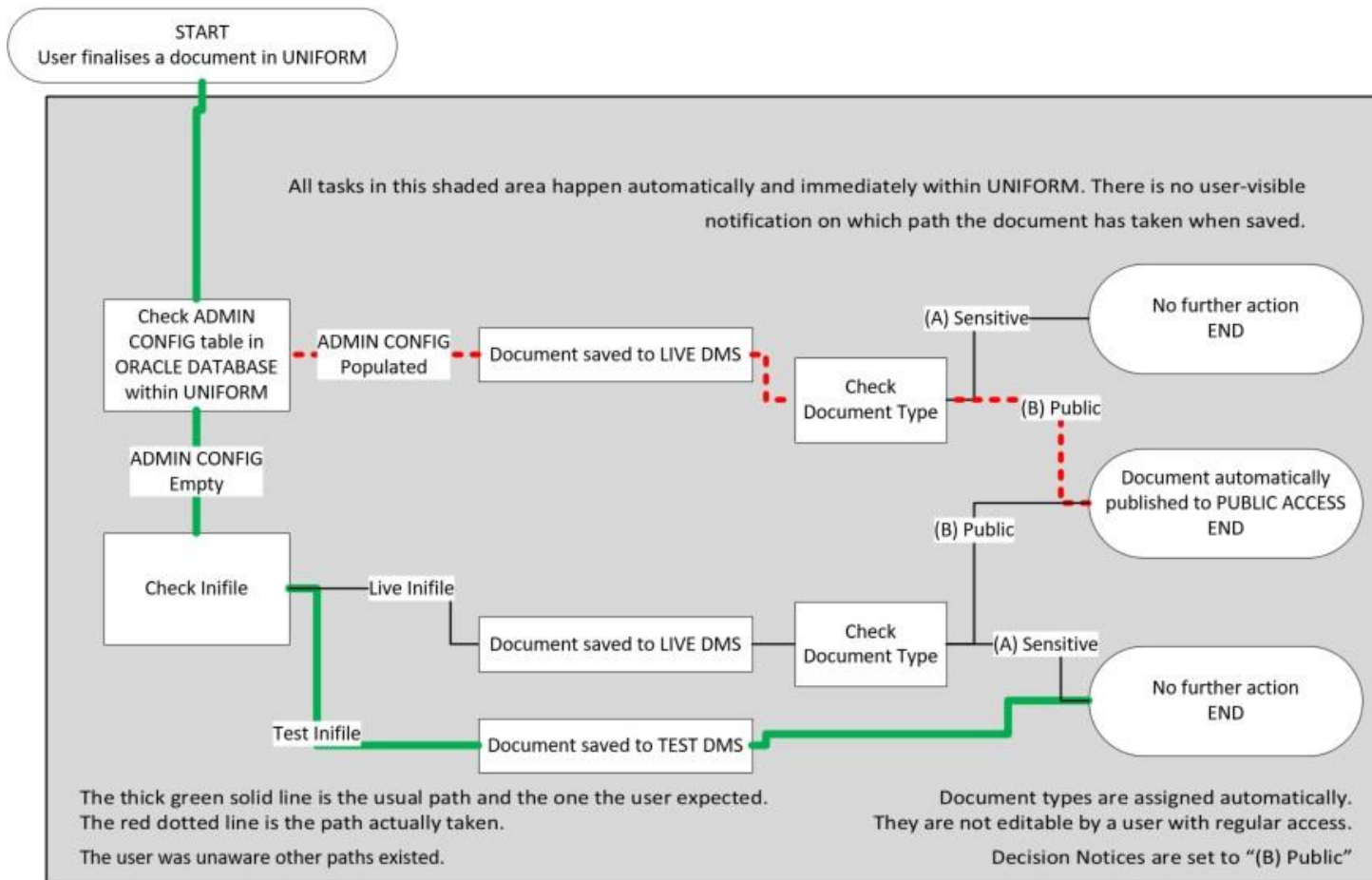
30. I have prepared this summary report in the knowledge and expectation that its circulation may include publication as part of Council committee papers. For that reason I have taken care to ensure the summary report does not include discussion of the conduct of specific individual officers, especially junior officers.
31. I have also prepared a detailed report that, as well as setting out the specific instructions and commands that led to this incident, does include comment on individual officers. My aim is that report supports learning and development at an individual level within both authorities to ensure suitable improvements occur.

Investigatory team and contact details	Report distribution list
<p>Head of Audit Partnership Rich Clarke (rich.clarke@midkent.gov.uk)</p> <p>Support from Mid Kent Human Resources Officers</p>	<p>Final Report Steve McGinnes, <i>Mid Kent Services Director</i></p> <p>Alison Broom, <i>Chief Executive, Maidstone Borough Council</i></p> <p>Larissa Reed, <i>Chief Executive, Swale Borough Council</i></p>

Appendix

The process that should have happened and the process that did happen

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Appendix 3 : Time line of issues relating to mistaken publication of planning notices

Date	Source	Detail
2014		Mid Kent Planning Services (MKPS) was created joining services from Maidstone, Swale and Tunbridge Wells Borough Councils to provide Planning Support. Significant issues with the service at the beginning causing problems for all three partner councils
2016		Tunbridge Wells Borough Council left MKPS
04 September 2018	MK ICT	An officer copied the INIFILE settings into <i>Configuration</i> within LIVE. This was to resolve a different issue.
2019	MKPS	Reported intermittent error with the IT system 'uniform'.
20 November 2020	IDOX	A 'patch' was published to rectify the intermittent error
12 July 2021	MK ICT	A snapshot of the system was taken to prepare of the testing.
6 August 2021	MK ICT MKPS	MKICT advised MKPS that testing could begin.
18 August 2021	MKPS	Agreed that testing would begin on 19 August 2021, testing between 10 – 20 cases.
19 August 2021	MKPS	Officer choses 12 cases in order to test 6 on 19 August and 6 or 20 August 2021
19 August 2021 (pm)		A member of the public contacted the council to advise that a planning decision had been published and had inappropriate language and should be removed.
19 August 2021 (pm)	MKPS	The decisions are removed from public view (although are still in Uniform). The decisions had been live for between 3 – 5 hours
20 August 2021	Director Shared	Telephoned Portfolio Holder for planning, advising of the issue. As the full

	Services	implications of the issue were not known, the Portfolio Holder was advised that the decisions had only been public for a short while and it was believed that therefore there were no ongoing implications.
23 August 2021	MK Legal	Legal Advice obtained from Mid Kent Legal Service which suggested we would need to Judicially Review the erroneous decisions
23 August 2021	Director Shared Services	Emailed Portfolio Holder for planning, summarising cause of the issue and advising that legal advice being sought as there may be legal implications.
24 August 2021	MK Legal	Counsel instructed to provide advice on options open to council
24 August 2021	MK HR	Discussions about investigation into conduct on staff member for using inappropriate language.
25 August 2021	MK Legal	Counsel advice received – setting out the requirement to judicially review the erroneous decisions.
25 August 2021	Director Shared Services	Legal advice shared with Chief Executive
25 August 2021	Director Shared Services	Legal advice shared with Portfolio Holder
30 August 2021		Offices closed – Bank Holiday
31 August 2021	MK Audit	MK Audit requested to investigate.
31 August – 7 September 2021	SBC	Meetings between legal, communications, SMT, and Mid Kent Services on next legal steps and communications strategy
1 September 2021	SBC	Discussion with Leader and Deputy Leader
7 September 2021	Director Shared Services	Letter sent to applicants by email setting out issue and intended action.
7 September 2021	Director Shared Services	Planning Decisions re posted to Public Access
7 September 2021	Swale Borough Council	Published a press release, setting out the issue and what actions they were taking

7 September 2021	Chief Executive	Public comments under a Mail Online article falsely name a member of planning staff as the member of staff who made the mistake, Chief Executive and Comms Manager contact Mail Online to get the comments removed.
8 September 2021	Chief Executive	Undertakes interviews with BBC South East and BBC Radio Kent
9 & 10 September 2021	MK Legal	1 JR was served on the Council and the Interested Parties on 9th September the remaining 4 were served on the Council and the Interested Parties on 10th September
21 September 2021	Head of Audit	Conversation with Chief Executive of Maidstone and Swale BC to discuss initial findings. Request for additional work to clarify some points.
27 September 2021	Head of Audit	Report published with recommendations regarding improvement
30 September 2021	Director Shared Services	Management response to recommendations

Appendix 4 Recommendations and Response

Recommendation	Owner	Response
Add a suitably evaluated risk of mistaken publication to risk registers.	MKS Director	<p>The risk register for MKPS has been updated to include mistaken publication.</p> <p>A similar risk will be added to the risk register for the Planning Service.</p> <p>The risk register for ICT will be updated to include introduction of system changes.</p>
Develop and document a clearer understanding of how the council manages and controls systems with public interface.	Head of MKICT	<p>MKS ICT have specialist officers to support and administer each system. This enables officers to develop their understanding of that specific service which through familiarity builds valuable experience in the configuration of that system. Given the nature of continuous system upgrades this approach has proven, barring this incident, to be effective.</p> <p>The process will be further strengthened by adopting a more robust approach to both identifying and recording any risks associated with upgrades along with planned mitigation. Linking to recommendation three within this report, ICT plan to undertake that exercise in conjunction with the service department with system changes only applied where both the service department and ICT can certify that a full review of risks and planned mitigations is in place.</p>
Formalise controls around system testing	Head of MKICT Head of Audit Partnership	<p>ICT support the introduction of a more robust approach to system testing including the identification and recording and risks and mitigation associated with any system change. ICT plan to undertake that exercise jointly with the service departments with system changes only applied where both departments can certify that a clear plan is in place and documented.</p>

		Input into that process from Internal Audit is welcomed with work is already progressing.
Create procedures to set out expectations following any mistaken publication within planning	MKPS Manager Head of Planning	<p>A procedure note has been developed jointly between MKPS and Planning services to provide clarity regarding the legal status of a decision notices once issued and process to be followed in the event of any future mistaken publication.</p> <p>The procedure will require that any mistaken publication be notified immediately to the Head of Planning who will seek legal advice to assess the impact and agree a course of action, with any direction to delete or re issue a decision directed in writing to the Planning Support Manager.</p> <p>The ability to delete decisions will be restricted within the planning system (Uniform) to the Planning Support Manager.</p>