South Ayrshire Council

Report by Head of Legal and Regulatory Services to Audit and Governance Panel of 8 November 2023

Subject: Risk Implications - Panel Reports

1. Purpose

- 1.1 The purpose of this report is to update Members on a review to ascertain if the 'Risk Implications' detailed in Council/ Panel reports are being used successfully.
- 2. Recommendation
- 2.1 It is recommended that the Panel:
 - 2.1.1 considers the analysis of 'risk implications' in sample Council and Cabinet Reports since January 2023;
 - 2.1.2 agrees that the Head of Legal and Regulatory Services reinforces existing guidance to report authors and request that they seek any additional support, if required, from the Service Lead Risk and Safety; and
 - 2.1.3 agrees that the Head of Legal and Regulatory Services reminds Members that ongoing scrutiny of the Risk Implications section of Panel reports will support informed decision making.

3. Background

- 3.1 When considering the Delivering Good Governance Report at Audit and Governance Panel in June 2023, Members made reference to Appendix 1: DGG 2022-23 Year End Assessment which includes the Core Principle F. Managing risks and performance through robust internal control and strong public financial management.
- 3.2 A Member advised that, in the spirit of self-evaluation and in relation to page 15 of Appendix 1, where it stated that 'All Panel and Council reports include 'Risk Implications of Accepting or Rejecting Recommendations', it would be helpful for a sample of these be reviewed to see if they were being used successfully. The Chief Executive agreed that a review would be undertaken to ascertain the position on this.
- 3.3 Guidance outlining requirements for Panel Reporting is provided to Chief Officers, Service Leads and Report Authors. This includes the mandatory reference to the inclusion of the risk implications of two potential outcomes as follows:

- Risk Implications of Adopting the Recommendations
- Risk Implications of Rejecting the Recommendations
- 3.4 An extract from this guidance is provided at <u>Appendix 1</u>. This provides detail on the purpose of this inclusion and how consideration of risks to the Council should be addressed by those preparing and approving reports.

4. Proposals

- 4.1 The review considered reports to full Council or Cabinet since January 2023 and was conducted over two phases.
- 4.2 Firstly, an analysis was undertaken on the number of reports submitted at each meeting, with data gathered on how many (and what percentage) of those reports indicated the following:
 - 1. There were risk implications relating to the approval of the recommendations.
 - 2. There were risk implications relating to the rejection of the recommendations.
 - 4.2.1 It is worth noting that a number of reports highlight risks on the basis of both acceptance and rejection of the recommendations where this applies. This allows Members to consider the balance of risk and supports informed decision making.
 - 4.2.2 The review, by necessity, excluded confidential reports on the basis that they were not available for consideration.
 - 4.2.3 The undernoted table provides data on the number of reports submitted at each meeting, the number and percentage of reports indicating some level of risk if report recommendations were accepted alongside the number and percentage of reports highlighting risks to the organisation if the recommendations were rejected.

Meeting & Date	No. of	No. with risks	% of total		% of total
	reports	for approval		for rejection	
Cabinet 17/01/2023	9	2	22%	8	89%
Cabinet 15/02/2023	13	2	15%	11	85%
Council 01/03/2023	11	2	18%	8	73%
Cabinet 14/03/2023	6	1	17%	5	83%
Cabinet 25/04/2023	11	1	9%	10	91%
Cabinet 3/05/2023	7	2	29%	5	71%
Cabinet 20/06/2023	18	4	22%	15	83%
Council 29/06/2023	14	1	7%	11	79%
Cabinet 29/08/2023	12	1	8%	12	100%

4.2.4 Accepting the recommendations of reports, would appear to create less risk to the organisation, with an average of 16% indicating the presence of risk should the paper be approved.

- 4.2.5 On average, 84% of Council reports advise of risk to the organisation should the recommendations be rejected.
- 4.2.6 This part of the analysis would support a theory that Officers are proposing projects and initiatives that are aimed at improving the risk profile of the organisation.
- 4.3 The second phase involved more detailed scrutiny of a sample of reports, including one from each of the Council Meetings noted above.
 - 4.3.1 An examination was undertaken on the specific risk information provided to Members from each sample report. This was considered alongside the decision Members were recorded as having taken with regards to the recommendations in each report.
 - 4.3.2 The review included a discussion with the report author on their view of whether they felt the risk implications they had outlined:
 - a Remain valid for the report.
 - B Whether the risk implications on either acceptance or rejection had been queried by Members at consultation phase or via reporting at Council / Cabinet.
 - C Whether any additional risks have arisen as a result of the Council or Cabinet decision which had not been foreseeable at the outset.
 - 4.3.3 Finally, the review was concluded with an online check of the webcast of each of the reports selected for the sample to establish if any specific questions had been raised by Members in respect of the risk implications of the decisions they were making.
 - 4.3.4 A breakdown of the findings of the second phase of the review is outlined at Appendix 2.
- 4.4 The findings can be summarised as follows:
 - On each of the sample reports analysed, report authors confirmed that the risks identified remain valid.
 - Where specific risks were identified in relation to approving a recommendation they were queried by Members prior to approval.
 - Report authors confirmed that no additional risks had arisen following the decisions taken against the recommendations of the reports sampled.
- 4.5 Whilst the findings of the review suggest that 'risk implications' are being considered in an appropriate manner, it can be helpful to reinforce guidance to report authors on a regular basis. To this end, it is proposed that the Head of Legal and Regulatory Services progresses this and request that report authors seek any additional support, if required, from the Service Lead Risk and Safety. It may also be helpful for the Head of Legal and Regulatory Services to remind Members that ongoing scrutiny of the Risk Implications section of Panel reports will support informed decision making.

5. Legal and Procurement Implications

- 5.1 The recommendations in this report are consistent with legal requirements.
- 5.2 There are no procurement implications arising from this report.

6. Financial Implications

6.1 There are no cost implications associated with the recommendations in this report.

7. Human Resources Implications

7.1 There are no human resource implications associated with the recommendations in this report.

8. Risk

8.1 Risk Implications of Adopting the Recommendations

8.1.1 The management of risk forms the basis of this report. There are no risks in adopting the recommendations.

8.2 Risk Implications of Rejecting the Recommendations

8.2.1 Rejecting the recommendations may give rise to internal or external criticism.

9. Equalities

9.1 The proposals in this report allow scrutiny of performance. The report does not involve proposals for policies, strategies, procedures, processes, financial decisions and activities (including service delivery), both new and at review, that affect the Council's communities and employees, therefore an equality impact assessment is not required.

10. Sustainable Development Implications

10.1 **Considering Strategic Environmental Assessment (SEA)** - This report does not propose or seek approval for a plan, policy, programme or strategy or document otherwise described which could be considered to constitute a plan, programme, policy or strategy.

11. Options Appraisal

11.1 An options appraisal has not been carried out in relation to the subject matter of this report.

12. Link to Council Plan

12.1 The matters referred to in this report contribute to the delivery of all Council strategic priorities.

13. Results of Consultation

13.1 Consultation has taken place with Councillor Martin Dowey, Portfolio Holder for Corporate and Strategic, and the contents of this report reflect any feedback provided.

Background Papers Report to Audit and Governance Panel of 28 June 2023 -

Delivering Good Governance – 2022/23 Assessment

<u>Audit and Governance Panel – 28 June 2023 – Minutes (page</u>

4, item 7)

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Date: 31 October 2023

South Ayrshire Council - Risk Implications - Panel Reports

Extract from South Ayrshire Council – Report Template and Guidance Notes:

Guidance on Risk Implications -

8. Risk

- 8.1 The purpose of this section is to assist Members in fulfilling their role in good decision making.
- 8.2 You should identify the risks of which Members should be aware when they are considering adopting the recommendations, or rejecting them, that may affect the achievement of agreed objectives or threaten the assets of the organisation. Such assets include employees, Elected Members, volunteers, property, infrastructure, image or relationships with the public and the ability to perform statutory or voluntary functions.
- 8.3 Risk identification is focused on the key risks against the achievement of Council's objectives. When identifying significant risks, the undernoted categories should be taken into account. This list is not exhaustive and acts as a prompt only, it does, however, ensure that a holistic approach to identification is taken.
 - (i) political;
 - (ii) economic;
 - (iii) social;
 - (iv) technological;
 - (iv) legal/ regulatory;
 - (v) environmental;
 - (vi) competitive;
 - (vii) customer /citizen;
 - (ix) managerial/ professional;
 - (x) financial;
 - (xi) health and safety;
 - (xii) partnership/contractual; and
 - (xiii) physical.
- 8.4 Officers are asked to give consideration to:
 - (i) any risks relating to approval of the proposal; and
 - (ii) any risks that might arise if the proposal is rejected.
- 8.5 In any of the above cases, officers should try to address:
 - (i) what, if any, the risks are;
 - (ii) how serious they are;

- (iii) what actions have been taken, or will be taken, to mitigate the risk;
- (iv) why no action can be taken to manage the risk, for example, it is out with the Council's control; or
- (v) who is responsible for the risk, when actions will be implemented and how they are monitored.

NB: Advice should be sought, where appropriate, from the Head of Legal and Regulatory Services or Service Lead – Risk and Safety

8. Risk

8.1 Risk Implications of Adopting the Recommendations

Insert one of the following statements:

8.1.1 New risk(s) has/ have been identified and assessed in line with the Council's risk management process as follows #########. These will be managed within existing operational activities and reference to the status of mitigations will be available through the XXXX Risk Register or the SAC Strategic Risk Register.

Or

8.1.1 These risks are out with the control of the Council and will continue to be monitored.

Or

8.1.1 There are no risks associated with adopting the recommendations.

8.2 Risk Implications of Rejecting the Recommendations

Insert one of the following statements:

8.2.1 The risks associated with rejecting the recommendations are [insert text, where you wish to mention specific risks].

Or

8.2.1 There are no risks associated with the rejection of the recommendations.

Or

8.2.1 Rejecting the recommendations will have a negative impact on the achievement of the following strategic outcomes within the Service and Improvement Plan for ###service###: ###insert details and also cross refer to the strategic objectives in the Council Plan###.

Or

8.2.1 Rejecting the recommendations may impact on the reputation of the Council.

Or

8.2.1 Rejecting the recommendations may increase the financial burden on the Council.

[Delete as applicable]

South Ayrshire Council - Risk Implications – Panel Reports

Appendix 2

Sample - analysis of reports to Council or Cabinet (January 2023 – August 2023)

1. Council / Cabinet - Date	Risk Implications	Decision	Feedback from Report Author	Webcast
				Review
Cabinet 17/01/2023	Risk implications of adopting	Decided: (1) to approve the	a/ Risks identified remain valid	Report
	the recommendations on	updated Procurement Strategy for	for the report.	presented by
	the report: None.	2023/24, as detailed in Appendix 1	YES	David
Report Title		of the report; (2) to agree to		Alexander.
	Risk implications of rejecting	publishing the Procurement	b/ Whether the risk implications	Members were
Procurement Strategy	recommendations on the	Strategy for 2023/24 on the South	on either acceptance or rejection	satisfied and
Update 2023/24	report:	Ayrshire Council website and that a	had been queried by Members at	comments
	May limit the Council's ability	copy be sent to the Scottish	consultation phase or via	were positive.
	to achieve Best Value, impact	Government; and (3) to request	reporting at Council / Cabinet.	Members
	on the reputation of the	that a written briefing be provided	NO	bulletin
	Council and/ or may give rise	to Members giving an update on		followed in
Report Lead and Person to	to breach of statute, legal	local spend and Community Wealth	c/ Whether any additional risks	February 2023.
Contact	challenge or Council liability.	Building, and that Members be	have arisen as a result of the	
Head of Finance, ICT and		advised of future supplier	Council or Cabinet decision which	
Procurement and David		engagement events.	had not been foreseeable at the	
Alexander, Service Lead –			outset.	
Procurement.			NO	

2. Council / Cabinet - Date	Risk Implications	Decision	Feedback from Report Author	Webcast
				Review
Cabinet – 15/02/2023	Risk implications of adopting	Decided:	a/ Risks identified remain valid	Report
	the recommendations:	(a) to note the progress of the	for the report.	presented by
	Proceeding with options 3 or	Maybole Community Campus; and	YES (non-material consent was	Derek Yuille.
Report Title	4 would require an	(b) to request officers to proceed	applied for and granted,	Members
	application to Planning for a	with option 3 – Football Pitch, as	therefore risk of accepting	posed a

Maybole Community	Non-Material Variation to the	outlined at Paragraph 4.2 in the	recommendations did not come	number of
Campus Update (Pitch	Planning Consent. It is	report with funding from slippage	to fruition).	questions
Provision)	understood that this should	within the Capital Programme.	b/ Whether the risk implications	relating to
	be successful.		on either acceptance or rejection	sports pitch
	Risk implications of rejecting		had been queried by Members at	options and
Report Lead and Person to	the recommendations		consultation phase or via	these were
Contact	Not proceeding with one of		reporting at Council / Cabinet.	responded to
Depute Chief Executive and	these options or proceeding		YES	by Officers.
Director of Housing,	with option 2 to not progress		c/ Whether any additional risks	
Operations and	with a 2nd pitch would		have arisen as a result of the	
Development and Derek	breach the Planning		Council or Cabinet decision which	
Yuille, Service Lead – Special	Condition requiring two		had not been foreseeable at the	
Property Projects	outdoor pitches to be		outset.	
	available within one year of		NO	
	occupation of the school.			

3. Council / Cabinet - date	Risk Implications	Decision	Feedback from Report Author	Webcast
				Review
Council – 01/03/2023	Risk implications of adopting	Decided:	a/ Risks identified remain valid	Report
	the recommendations:	(a) to approve the Council Plan for	for the report.	presented by
Report Title	The ongoing risks associated	2023-2028 attached as Appendix 1	YES	Jane Bradley
	with the delivery of the	to the report; and	b/ Whether the risk implications	and Kevin
Council Plan 2023-28	Council Plan will be managed	(b) to note that, following	on either acceptance or rejection	Anderson.
	within existing operational	approval, service plans based on	had been queried by Members at	Members
Report Lead and Person to	activities and reference to	the agreed outcomes would	consultation phase or via	discussed
Contact	the status of mitigations will	be developed by each service area	reporting at Council / Cabinet.	priorities and
Director of Strategic Change	be updated through the	and made available for scrutiny by	NO	actions and
and Communities and Kevin	Strategic Risk and Service	Members at the Council meeting in	c/ Whether any additional risks	were satisfied
Anderson, Service Lead –	Registers.	June 2023	have arisen as a result of the	with all
Policy, Performance and	Risk implications of rejecting		Council or Cabinet decision which	aspects.
Community Planning.	the recommendations:		had not been foreseeable at the	
			outset.	

Failure to approve the	NO. (cross reference to ongoing	
Council Plan could result in a	management of strategic	
perceived lack of a clear	planning risk within SAC Strategic	
strategic direction, and that	Risk Register).	
the Council is not seen as		
maintaining its agreed		
performance management		
framework.		

4. Council / Cabinet - date	Risk Implications	Decision	Feedback from Report Author	Webcast
				Review
Cabinet – 14/03/2023	Risk implications of adopting	Decided:	a/ Risks identified remain valid	Report
	the recommendations:	(1) to approve the Ash Dieback	for the report.	presented by
Report Title	There is a risk that the	Plan at Appendix 1, with year 1	YES	Fiona Ross.
	Council will not be able to	funding coming from the		Risks outlined
Ash Dieback	fund the required action and	Council's uncommitted reserves;	b/ Whether the risk implications	within both the
	recovery plan over the next 7	and	on either acceptance or rejection	report and the
Report Lead and Person to	years without financial	(2) to agree that Members lobby	had been queried by Members at	presentation.
Contact	support from the Scottish	CoSLA to fund the full project	consultation phase or via	Members
Depute Chief Executive and	Government.	through the Scottish	reporting at Council / Cabinet.	asked a range
Director of Housing,	Risk implications of rejecting	Government. If the Scottish	YES. Risk implications were	of risk related
Operations and	the recommendations:	Government do not agree to fund	queried extensively prior to and	questions.
Development and Fiona	There is a risk that in	the remaining work for	during Cabinet meeting.	This risk is also
Ross, Service Lead -	rejecting this proposal the	years 2 to 7 a report will be		managed and
Neighbourhood Services and	Council will fail to deal with a	brought to Cabinet to seek	c/ Whether any additional risks	monitored via
Kevin Braidwood, Head of	known health and safety risk	instruction from Members	have arisen as a result of the	the SAC
Ayrshire Roads Alliance.	within its assets that could		Council or Cabinet decision which	Strategic Risk
	have serious or fatal		had not been foreseeable at the	Register.
	consequences breaching its		outset.	
	duty of care. If South		NO	
	Ayrshire Council were found			
	not to have fulfilled its duty			

of care under the Occupiers'		
Liability (Scotland) Act 1960,		
the local authority could be		
held liable for injury or		
damage caused as a result.		

5. Council / Cabinet - date	Risk Implications	Decision	Feedback from Report Author on	Webcast Review
Cabinet – 25/04/2023	Risk implications of adopting	Decided: to approve the revised	a/ Risks identified remain valid	Report
Report Title	the recommendations:	Code of Conduct for Employees, as	for the report.	presented by
Code of Conduct for	None.	detailed in Appendix 1 of the	YES.	Wynne Carlaw.
Employees – Conflict of	Risk implications of rejecting	report	b/ Whether the risk implications	There was a
Interest	the recommendations:		on either acceptance or rejection	general
Report Lead and Person to	The risks associated with		had been queried by Members at	understanding
Contact	rejecting the		consultation phase or via	that the
Head of Legal and	recommendations are that		reporting at Council / Cabinet.	revisions within
Regulatory Services and	staff are not alert to		NO.	the Code of
Wynne Carlaw, Service Lead	instances where they may		c/ Whether any additional risks	Conduct would
 Democratic Governance. 	be, or could be perceived to		have arisen as a result of the	strengthen the
	be, vulnerable to a conflict of		Council or Cabinet decision which	position of the
	interest which may		had not been foreseeable at the	organisation as
	jeopardise their impartiality,		outset.	regards conflict
	integrity and reputation		NO.	of interest.
	which may in turn, result in			
	reputational damage.			
	to the Council and be subject			
	to police investigation.			

6. Council / Cabinet - date	Risk Implications	Decision	Feedback from Report Author on	Webcast Review
Cabinet – 23/05/2023		Decided:		

Report Title	Risk Implications of	(1) to approve the strategic	a/ Risks identified remain valid	Report
Transforming the Estate	Adopting the	recommendations following	for the report.	presented by
Report Lead and Person to	Recommendations:	conclusion of the consultant's	YES on basis that Officers will	Christina Cox
Contact	Some recommendations may	review as shown at Appendix 1 of	return to Cabinet for approval	and Tom
Depute Chief Executive and	not be feasible. However,	this report;	for proposed business cases and	Burns.
Director of Housing,	feasibility will be fully	(2) to authorise that a review of	risks for each will be subject to	Members
Operations and	considered in the business	the proposals is carried out for	further scrutiny.	asked a range
Development	cases that are developed for	each asset type and	b/ Whether the risk implications	of questions
and Chris Cox, Assistant	each asset and	validate cashable benefits and	on either acceptance or rejection	and provided
Director, Planning and	recommended action.	costs for the Council to deliver the	had been queried by Members at	comment on
Development; Tom Burns,	Risk Implications of	outline work plan at	consultation phase or via	risk related
Service Lead – Asset	Rejecting the	Appendix 2 of this report;	reporting at Council / Cabinet.	issues before
Management and	Recommendations:	(3) to request that, an update	YES	approving
Community Asset Transfer.	The risks with rejecting the	report on progress be provided to	c/ Whether any additional risks	report.
	recommendations are that	Cabinet in June 2024;	had arisen as a result of the	
	the Council is unable to	and	Council or Cabinet decision which	
	benefit from opportunities,	(4) to acknowledge that, additional	have not been foreseeable at the	
	particularly financial, to	resources will be required to	outset.	
	transform its	complete the review.	NO, but as above, each business	
	estate and better meet the		case will include further	
	needs of residents and the		examination of risk for members	
	Council.		to consider.	

7. Council / Cabinet - date	Risk Implications	Decision	Feedback from Report Author	Webcast
				Review
Cabinet – 20/06/2023	Risk implications of adopting	Decided:	a/ Risks identified remain valid	Report
Report Title	the recommendations:	(1) to approve the updated	for the report.	presented by
Performance Management	There are no risks associated	Performance Management	YES	Kevin
Framework 2023-28	with adopting the	Framework as set out in	b/ Whether the risk implications	Anderson.
Report Lead and Person to	recommendations.	Appendix 1 of the report.	on either acceptance or rejection	Members
Contact			had been queried by Members at	commended

Director of Strategic Change	Risk implications of rejecting	consultation phase or via	report. No
and Communities and Kevin	the recommendations:	reporting at Council / Cabinet.	issues raised
Anderson, Service Lead -	The risks associated with	NO	regarding risk.
Policy, Performance and	rejecting the	c/ Whether any additional risks	
Community Planning	recommendations are that	have arisen as a result of the	
	the Council will not have an	Council or Cabinet decision which	
	agreed PMF in place to	had not been foreseeable at the	
	monitor performance and	outset.	
	improvement.	NO	

8. Council / Cabinet - date	Risk Implications	Decision	Feedback from Report Author	Webcast
				Review
Council – 29/06/2023	Risk implications of adopting	Decided: (draft minutes)	a/ Risks identified remain valid	Report
Report Title	the recommendations:	(1) to note that the review	for the report.	presented by
Review of South Ayrshire	There are no risks associated	required to be undertaken jointly	YES	Tim
Integration Scheme	with adopting the	by the parties to the Integration	b/ Whether the risk implications	Eltringham.
Report Lead and Person to	recommendations.	Scheme, namely South Ayrshire	on either acceptance or rejection	No issues
Contact	Risk implications of rejecting	Council and NHS Ayrshire and	had been queried by Members at	raised around
Director of Health and Social	the recommendations:	Arran;	consultation phase or via	risk
Care and Sheila Tyeson,	The Integration Scheme is	(2) to agree that officers proceed	reporting at Council / Cabinet.	implications.
Senior Manager – Planning	the principal governance	with arrangements for the review	NO	Short
and Performance	document that governs the	and joint consultation as described	c/ Whether any additional risks	discussion on
	operation of the South	in paragraphs 4.2 and 4.3 of the	have arisen as a result of the	consultees.
	Ayrshire Integration Joint	report;	Council or Cabinet decision which	Report was
	Board and the South Ayrshire	(3) to note that further reports	had not been foreseeable at the	commended.
	Health and Social Care	would be provided to Council as	outset.	
	Partnership. It requires to	the review progressed; and	NO	
	articulate clearly the role not	(4) to otherwise note the contents		
	only of the IJB in the	of this report.		
	integration of health and			

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social care, but the way in	
which the Board and the	
Parties – the Council	
and the NHS Board - will	
work collaboratively to	
deliver National and Local	
Outcomes and Integration	
Planning Principles as defined	
by the Public Bodies (Joint	
Working) (Scotland) Act,	
2014, in South Ayrshire.	
The IJB has included a	
strategic level risk in its	
approved Risk Register	
regarding the strategic	
objectives of Health and	
Social Care Integration not	
being realised under the	
existing arrangements. This	
has been rated at 12 (High	
Risk)	

9. Council / Cabinet - date	Risk Implications	Decision	Feedback from Report Author	Webcast
				Review
Cabinet 29/08/2023	Risk implications of adopting	Decided:	a/ Risks identified remain valid	Report
Report Title	the recommendations:	(1) to acknowledge the challenges	for the report.	presented by
Corporate Support Services	There are no risks associated	being encountered in terms of	YES – (but recommendations	Tim Baulk.
Capacity Issues – Update	with adopting the	recruiting staff to these	agreed, therefore risk is	Members were
Report Lead and Person to	recommendations.	temporary posts;	mitigated).	satisfied with
Contact				information

Joint Report by Head of	Risk implications of rejecting	(2) to agree to convert seven	b/ Whether the risk implications	provided. No
Finance, ICT and	the recommendations:	temporary posts to permanent	on either acceptance or rejection	questions
Procurement	There is a risk that Central	posts (per 4.5) immediately and	had been queried by Members at	raised.
and Head of Legal and	Support Service functions will	fund from the available reserves	consultation phase or via	
Regulatory Service – author	be unable to maintain an	until the balance had been	reporting at Council / Cabinet.	
- Tim Baulk, Head of	adequate service provision if	expended, and thereafter include	NO	
Finance, ICT and	the recommendations are	the posts in future annual staff	c/ Whether any additional risks	
Procurement.	rejected	budgets; and	have arisen as a result of the	
		(3) to request officers to undertake	Council or Cabinet decision which	
		a review of Communications	had not been foreseeable at the	
		support to be presented to Cabinet	outset.	
		in October 2023.	NO	

2 October 2023