

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>	MKPS Manager MBC Head of Planning SBC Head of Planning

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>