MIDDLESBROUGH COUNCIL	Middlesbrough moving forward

Report of:	Corporate Director for Legal and Corporate Services, Charlotte Benjamin
Submitted to:	Audit Committee
Date:	3 September 2026
Title:	Deep Dive Review on Strategic Risk 04 – Unlawful Decision by the Council
Report for:	Information
Status:	Public
Council Plan priority:	Delivering Best Value

Proposed decision(s)

That the Audit Committee:

- **NOTES** the latest position with regard to Strategic Risk 04; and,
- **CONSIDERS** whether they have received sufficient information to be assured that there are appropriate arrangements are in place to manage the risk.

Executive summary

Strategic Risk 04 relates to the risk of an unlawful decision being made by the Council, resulting in legal challenge, financial loss, reputational damage, regulatory intervention, disruption to service delivery and reduced public confidence.

The risk was originally identified following significant governance weaknesses highlighted through external review and assurance processes. Since that time the Council has implemented a comprehensive programme of governance improvement, including delivery of the Corporate Governance Improvement Plan, implementation of the Section 24 Action Plan, strengthening of decision-making processes, and embedding of continuous improvement arrangements.

The Council's 2025/26 Annual Governance Statement concluded that the Council's governance arrangements were operating effectively and were fit for purpose in supporting delivery of the Council's objectives and statutory responsibilities. The review confirmed that governance arrangements set out within the Local Code of Corporate Governance were in place and operating effectively in practice and that available assurance sources provided reasonable assurance regarding the effectiveness of governance, risk management and internal control arrangements.

Whilst the risk can never be wholly eliminated, significant improvements have been made to the Council's governance framework, resulting in a substantially strengthened control environment. The remaining focus is on maintaining momentum through embedded continuous improvement and ongoing monitoring.

1. Purpose

1.1 This report sets out the background to Strategic Risk 04 relating to unlawful decision-making by the Council. The report outlines the nature of the risk, progress made in managing and mitigating that risk, the current position and the next steps.

2. Recommendations

2.1. That the Audit Committee:

- **NOTES** the latest position with regard to Strategic Risk 04; and,
- **CONSIDERS** whether they have received sufficient information to be assured that there are appropriate arrangements are in place to minimise the risk of an unlawful decision being made.

3. Background and relevant information

3.1 Strategic Risk 04 was identified and added to the Strategic Risk Register in 2023, following concerns relating to the Council's governance arrangements and decision-making processes. The risk recognised the potential for decisions to be taken unlawfully because of governance weaknesses, inadequate consideration of relevant information, failure to follow constitutional requirements or failure to comply with legal obligations.

3.2 Potential consequences of the risk include:

- Judicial Review proceedings and other legal challenges.
- Regulatory intervention.
- Financial loss and compensation claims.
- Adverse audit findings.
- Reputational damage.
- Delays to service delivery and strategic programmes.
- Reduced confidence amongst residents, partners and stakeholders.

3.3 At the time and over the past three years, a series of mitigation actions have been taken to reduce the likelihood of this risk occurring. These included:

- Creation of a Corporate Governance Improvement Plan to support and evidence activity within its governance improvement journey and assess the impact of that activity
- Creation and implementation of a complementary Section 24 Action Plan in response to the statutory recommendations made by the Council’s External Auditors

- Creation and completion of a time limited Independent Improvement Advisory Board to support the Council's improvement journey.

These measures comprised the Council's overarching approach to improvements to culture and practice. The Council responded through a significant programme of governance improvement activity designed to strengthen corporate governance, accountability, transparency and decision-making arrangements, which are set out in more detail below.

3.4 The key strands of activity are outlined below.

Corporate Governance Improvement Plan

3.5 The Corporate Governance Improvement Plan was developed to address governance weaknesses identified through assurance activity and external review.

3.6 The programme focused on strengthening:
- governance structures;
- accountability arrangements;
- constitutional compliance;
- risk management;
- officer and member decision-making processes;
- corporate oversight and challenge functions.

The improvement plan has now been completed and embedded within normal business processes.

Section 24 Action Plan

3.7 The Council implemented a comprehensive action plan in response to the statutory recommendations arising from the Section 24 Report.

3.8 The plan focused on restoring confidence in governance arrangements and ensuring the Council had robust frameworks for financial management, legal compliance, transparency and accountability.

Committee Reporting and Decision-Making Processes

3.9 The Council reviewed both the committee report template and the report development process to strengthen the quality of information presented to decision-makers.

This work has ensured:

- clearer recommendations;
- improved legal and financial advice;
- greater visibility of risks and implications;
- improved transparency;
- stronger governance compliance.

Best Value and Governance Improvement Reporting

3.10 The Council has regularly reported progress against governance improvement activity and recommendations arising from external review.

3.11 This has supported transparency, assurance and member oversight throughout the improvement journey.

Annual Governance Statement

3.12 The Annual Governance Statement for 2024/25 was completed and approved in accordance with statutory requirements.

Current Position

3.13 The Council's governance and decision-making framework is significantly stronger than when this risk was initially identified.

3.14 The 2025/26 Annual Governance Statement concluded that governance arrangements were operating effectively during the year and were fit for purpose. The AGS confirmed that the governance arrangements described within the Council's Local Code of Corporate Governance were in place and operating effectively in practice. The review drew upon internal audit, external audit, statutory officer assurances, reports to members and other independent sources of assurance. Together these sources provided reasonable assurance regarding the effectiveness of the Council's governance, risk management and internal control arrangements.

3.15 The AGS identified several governance strengths that directly contribute to the management of Strategic Risk 04, including:

- strengthened performance and financial governance arrangements;
- an up-to-date Local Code of Corporate Governance;
- an actively managed Constitution;
- effective audit, scrutiny and assurance arrangements;
- a systematic approach to continuous improvement;
- clear strategic planning and performance management frameworks.
- The AGS also noted that the Council had completed a transition from recovery-based improvement activity to a continuous improvement model designed to ensure governance arrangements remain effective and responsive to emerging risks and challenges.

3.16 The only outstanding action currently linked to Strategic Risk 04 is:

SR-04g Deliver Continuous Improvement Plan quarterly updates to Executive from October 2025 onwards.

3.17 This action recognises that effective governance requires ongoing review and development and that governance improvement should be embedded within normal corporate management arrangements rather than delivered through standalone recovery programmes.

3.18 Whilst no governance system can completely remove the possibility of an unlawful decision being made, the Council's control environment has been substantially strengthened and the likelihood of the risk materialising has reduced considerably.

Once the Annual Governance Statement has been finalised, all planned actions within it will be tracked as future mitigating actions against this risk.

Managing the Risk

3.19 The Council continues to manage this risk through a range of governance, assurance and oversight arrangements.

3.20 These include:

- an annually reviewed Local Code of Corporate Governance adopted by Full Council in April 2026;
- an actively managed Constitution which was reviewed by Full Council in May 2026 and assessed as remaining fit for purpose;
- statutory oversight provided by the Monitoring Officer, Section 151 Officer and Chief Executive;
- independent internal audit assurance, which concluded that the governance, risk management and control framework provides reasonable assurance
- oversight from Audit Committee through its governance, risk, audit and assurance work programme;
- corporate risk management processes and strategic risk monitoring;
- annual production of the Annual Governance Statement;
- implementation of the Governance and Assurance Mapping Policy;
- continuous improvement arrangements embedded within the Council's planning, performance and governance framework.
- These controls collectively reduce the likelihood of unlawful decision-making and ensure that emerging governance issues are identified and addressed at an early stage.

3.21 Once the Annual Governance Statement has been finalised, all planned actions within it will be tracked as future mitigating actions against this risk. This approach ensures the Council grips the commitments it has made in the Annual Governance Statement and demonstrates its continued commitment to actively managing this risk.

Next Steps

3.22 The Council will continue to:

- maintain an annual review of governance effectiveness through the Annual Governance Statement process;
- implement integrated performance, financial and risk management reporting arrangements;
- deliver the Audit Committee effectiveness action plan and annual effectiveness review process;

- Continue to report to Audit Committee on the individual corporate governance disciplines that support lawful decision making and form part of the corporate governance framework;
- develop and implement a revised Member Development Strategy in preparation for the 2027 local elections;
- continue to review and update governance arrangements where required;
- strengthen information governance and oversight of digital and AI-related governance risks;
- maintain officer and member awareness of governance, ethical standards and constitutional requirements.

3.23 Through these measures the Council will continue to strengthen governance arrangements and ensure they remain robust, proportionate and fit for purpose.

4 Other potential alternative(s) and why these have not been recommended

Do Nothing

4.1 Maintaining effective governance arrangements is a fundamental statutory responsibility of the Council.

4.2 Failure to actively monitor and improve governance arrangements would increase the likelihood of unlawful decisions, legal challenge, regulatory intervention and financial loss. This option is not recommended.

Reduce Governance Oversight

4.3 Reducing assurance and governance arrangements could reduce administrative activity in the short term but would significantly increase exposure to governance, legal and reputational risks.

4.4 Given the Council's commitment to best value, transparency and continuous improvement, this option is not recommended.

5 Impact(s) of the recommended decision(s)

Topic	Impact
Financial (including Social Value)	Effective governance reduces the risk of financial loss arising from legal challenge, regulatory intervention, compensation claims or ineffective decision-making.
Procurement	Robust governance arrangements support compliance with procurement legislation, Contract Procedure Rules and decision-making requirements.
Legal	This strategic risk directly relates to legal compliance. Existing controls help ensure decisions are taken lawfully,

	transparently and in accordance with the Constitution and statutory obligations.
Risk	Strategic Risk 04 continues to be monitored through the corporate risk management framework. The 2025/26 Annual Governance Statement concluded that governance arrangements were operating effectively and were fit for purpose, providing reasonable assurance regarding governance, risk management and internal controls. Future actions focus on embedding continuous improvement and maintaining governance maturity
Human Rights, Public Sector Equality Duty and Community Cohesion	Effective decision-making supports compliance with equality and human rights obligations.
Reducing poverty	Effective governance supports delivery of priorities, services and interventions designed to improve outcomes for residents.
Climate Change / Environmental	No direct implications arising from this report.
Children and Young People Cared for by the Authority and Care Leavers	No direct implications arising from this report.
Data Protection	Effective governance supports compliance with information governance and data protection legislation.

Appendices

1	Strategic Risk Extract

Background papers

Body	Report title	Date
Full Council	Local Code of Corporate Governance	April 2026
Audit Committee	Annual Governance Statement 2025/26	June 2026
Audit Committee	Governance and Assurance Mapping Policy	April 2026
Executive	Continuous Improvement Plan Reports	Various
Audit Committee	Corporate Governance Improvement Plan Updates	Various

Audit Committee	Section 24 Action Plan Monitoring Reports	Various

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