



Auditor Guidance Note 4 (AGN 04)

Auditors' Additional Powers and Duties

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About Auditor Guidance Notes

Auditor Guidance Notes (AGNs) are prepared and published by the National Audit Office (NAO) on behalf of the Comptroller and Auditor General (C&AG) who has power to issue guidance to auditors under Schedule 6 paragraph 9 of the Local Audit and Accountability Act 2014 (the Act).

AGNs set out guidance to which local auditors must have regard under Section 20(6) of the Act. The guidance in AGNs supports auditors in meeting their requirements under the Act and the *Code of Audit Practice* published by the NAO on behalf of the C&AG.

The NAO also issues Weekly Auditor Communications (WACs) to local auditors to bring to their attention relevant information to support them in carrying out audit work. The firms that are local auditors under the Act may use WACs to update their own internal communications and reference tools.

AGNs are numbered sequentially and published on the NAO's website. Any new or revised AGNs are brought to the attention of local auditors through the WACs.

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The AGNs are designed to assist local auditors in forming their own understanding of the requirements of the Code. Auditors are required to have regard to AGNs, which means that they must take into account the guidance issued by the NAO, and, if they decide not to follow it, they must give clear (in the sense of objective, proper, and legitimate) reasons within audit documentation as to why they have not followed the guidance. AGNs are in no way intended as a substitute for the exercise of the independent professional skill and judgement of a local auditor in deciding how to apply the NAO's guidance or when providing explanations as to why guidance has not been followed.

Local auditors should not assume that AGNs are comprehensive or that they will provide a definitive answer in every case.



AGN 04 is relevant to all local auditors of local authorities and other relevant local government bodies covered by the Local Audit and Accountability Act 2014 and the *Code of Audit Practice*.

Introduction

This AGN sets out guidance for auditors to support their work in respect of their additional powers and duties under the Local Audit and Accountability Act 2014 (the Act) and the NAO's Code of Audit Practice (the Code). These powers and duties are set out in the sections below.

In respect of auditors' reporting responsibilities in connection with work completed having regard to AGN 04, auditors should refer to the separate AGN on reporting (AGN 07).

Supporting Information

For information to support meeting their responsibilities, and when having regard to this AGN, auditors may also wish to refer to the LACG extranet.



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Section 1: General Principles

1. The terms 'local auditor' and 'auditor' cover the firm which has been appointed to carry out the engagement and the engagement leads nominated by a firm to discharge its statutory obligations under the Act and the Code. Auditors and all members of audit teams must comply with the Act and the Code and have regard to guidance issued by the NAO on behalf of the C&AG.
2. Insofar as auditors are dealing with matters in the audit of accounts for 2014-15 and earlier, they should refer to the information previously issued by the Audit Commission, which remains available to auditors through the LACG extranet. For 2015-16 audits onwards, auditors carry out their work under the 2015 Code and should have regard to the guidance in this AGN.
3. Although auditors may need to take legal advice in relation to the exercise of their additional powers and duties, as for all other aspects of work performed under the 2015 Code, they remain responsible for the decisions and judgements they make. As such, consideration of matters relating to the exercise of additional powers and duties requires the application of professional judgment as in all other aspects of their work.
4. Given the quasi-judicial and statutory nature of these functions, the auditor must comply with public law requirements and therefore:
 - adopt a fair and impartial process;
 - where exercising discretion, consider all relevant considerations and discount irrelevant considerations;
 - ensure they have properly understood the relevant law; and
 - ensure the decision is rational and that adequate reasons are given to explain it.
5. The Code stresses that a proportionate and timely approach to consideration of matters relating to electors' rights must be taken. However, auditors may need to consider whether a matter brought to their attention raises any concerns over the way the audited body is being managed or led, even if the amounts involved in the particular issue raised are relatively small. In other words, auditors should be alert to the possibility that even matters involving relatively small sums may give rise to questions about governance.
6. The Code expects that auditors will adequately document their work and this expectation applies to the exercise of additional powers and duties as much as to any other part of the audit.

Section 2: Auditor Considerations in Respect of Public Questions and Objections

Initial contact and considering information brought to the auditor's attention

7. Information can come to the auditor's attention in a variety of ways. Auditors may receive correspondence in the form of letters or emails, by telephone, or through face-to-face meetings. Auditors may also become aware of matters potentially relevant to their additional powers and duties through carrying out work on their main responsibilities to give an opinion on the accounts and a conclusion on arrangements to secure value for money.
8. When responding to initial contact from local electors or their representatives, or from other interested persons, auditors should take all reasonable steps to enable the correspondent to understand clearly what the auditor can and cannot do in relation to the exercise of their additional powers and duties.
9. Under paragraph 5.3 of the Code, auditors have an obligation to consider information received. Auditors are required to 'consider whether the matter needs investigation and action... or whether it can be considered more effectively within planned work programmes'. Auditors should not, however, fetter their discretion (i.e. by forming a final rather than merely provisional view on a matter), in case a formal objection is subsequently made on the same subject matter.
10. Auditors should therefore consider whether an issue coming to their attention can be handled as part of discharging their main audit responsibilities as set out in paragraph seven, before exploring the options available to them in terms of exercising additional powers.

Considering and responding to formal questions under the Act

11. Matters may be brought to the auditor's attention through formal processes under the Act. These are:
 - formal questions under the Act, covered in this section; and
 - objections, covered in the following section on page seven.
12. While any 'interested person' can inspect the accounting records and other documents relating to those records, only registered electors have rights under the Act to ask the auditor questions. Whether or not someone is an interested person is a matter of law, so a person is not 'interested' for these purposes just because they say

they are. Persons with a connection to the area will often be interested persons, for example business-rate payers or those who pay fees and charges to the council.

13. Although the auditor can decide to what extent to answer a question, this discretion has, in law, to be exercised reasonably and fairly. In broad terms, in determining their response, the auditor should take account of the general principles set out in the Code and on page four of this AGN. For example, the question might be better answered by another organisation, require investigation beyond the auditor's remit, or involve cost that is disproportionate to the public interest at stake (which is borne by the local taxpayer).

Disclosure of information

14. Where an auditor does decide that they are the most appropriate person to answer the question, they should provide a timely response which gives sufficient detail as is proportionate to the significance and complexity of the subject matter.
15. In answering questions, auditors may disclose information in respect of the steps they have taken to obtain an answer to the question and relevant evidence that they have considered, and may disclose information in factual terms relating to the actions taken (or not taken) by the authority where they are relevant. Auditors should not, however, comment on the validity of decisions made (other than in relation to lawfulness), speculate on the merits of policy decisions, and should only disclose personal information in accordance with data protection law in response to a question.
16. Under section 26(4) and (5) of the Act, a local elector may not ask questions that would require disclosure of information that is protected by commercial confidentiality. This exception will arise only if disclosure would prejudice commercial confidentiality. Auditors should therefore satisfy themselves whether there is some evidence (or failing that an obvious risk) of such prejudice. Even then, this exception will only apply if the auditor is satisfied there is no overriding public interest in favour of disclosure. This is a balancing act, such that the auditor will need to consider the prejudice against any public interest put forward and form a view as to where the balance lies. Given the way the statutory provision is expressed, the public interest in disclosure would need to outweigh the prejudice for the exception to apply.
17. Where the auditor considers that information may potentially be protected by commercial confidentiality, they should enquire further of the council or a relevant commercial entity whether the information in question may be protected on grounds of commercial confidentiality. The auditor should also seek from the person asking the question their views, including on any public interest factors in favour of disclosure.

Considering objections made by local government electors or their representatives

18. Auditors should follow a three step approach to objections:
- Step 1 – is the objection eligible?
 - Step 2 – shall the auditor, in their discretion, accept the objection for consideration?
 - Step 3 – considering and deciding the objection.
19. The requirements for each of these steps are explained in more detail in the following sections.

Step 1 – is the objection eligible?

Eligibility

20. Section 26 of the Act deals with public rights of inspection. 'Interested persons' can inspect the accounting records to be audited at each audit and all books, deeds, contracts, bills, vouchers, receipts and other documents relating to those records. They may also make copies. Under section 27 of the Act, however, only registered electors for the area in question have the right to make objections.
21. Procedural matters, such as the date on which the period for the exercise of public rights commences, and the information that must be supplied for an objection to be eligible, are set out in the Accounts and Audit Regulations 2015. One significant change brought in by the regulations is that **there is now a 30 working-day period within which these rights may be exercised.**
22. Auditors should undertake checks to confirm that the objection meets the qualifying requirements, namely that the objection must:
- be made by a local government elector or their representative (this means the elector must be registered on the electoral roll for the local area in question);
 - relate to an open year of account (a year for which the auditor has not yet issued their certificate closing that year's audit);
 - be made within the 30 working-day prescribed period;
 - be on matters which are within the auditor's jurisdiction;
 - at least briefly set out facts and grounds, which on the face of it, identify or which could give rise to an item of account contrary to law or a matter in relation to which a public interest report could be warranted;

- be in writing; and
 - be copied to the audited body.
23. Auditors can issue public interest reports in a wide range of circumstances, in relation to both accounting issues and those concerning value for money arrangements. Auditors should therefore be mindful of the potential for the issue raised by the objector to lead to a public interest report when determining the eligibility of any objections received.
24. While it is helpful for the objector to specify the item of account to which the objection relates, note that where the matter raised in the objection is in relation to a matter to which a public interest report could be warranted, it is not necessary for the objector to identify an item of account in order for the objection to be eligible.
25. The eligibility checks, however, may take place after the 30 working-day period has ended, and auditors should not reject objections on the grounds of not having completed any necessary checks on the information provided before the end of the inspection period.
26. Where these checks confirm that an objection does not meet the qualifying requirements and is therefore not eligible, the auditor may wish to explain the reasons for this to the elector and provide a further opportunity for an eligible objection to be submitted within the inspection period. Where this does not happen, or where any resubmission is still ineligible, the auditor should treat the information provided as a 'matter brought to their attention' and consider whether any further action may be appropriate in respect of their responsibilities under the Code.
27. If the 30 working-day limit is imminent and the only reason that the objection is not currently eligible is that insufficient detail has been provided to amount to the necessary facts and grounds in relation to which a declaration could be sought or a public interest report made, and unless hopelessly deficient in this regard, the auditor should accept the objection as eligible and proceed to Step 2. The auditor can still reject the objection at a later date if the necessary additional information is not provided.
28. Where the 30 working-day period has elapsed, and the issue can therefore no longer be treated as an objection, the auditor should not accept it. The auditor should, however, still treat the information provided as a 'matter brought to their attention' and consider whether any further action may be appropriate in respect of their responsibilities under the Code.

Step 2 – shall the auditor, in their discretion, accept the objection for consideration?

Investigating and seeking information and determining whether to accept an objection

29. In deciding whether or not to accept the objection for consideration, auditors may need to carry out some initial enquiries. If the auditor has sought information from the audited body, then in most cases, where the auditor is provisionally minded not to accept the objection for consideration as a result, it will be necessary in order to meet the requirements of public law, to share the results of this enquiry with the objector or their representative and to offer them an opportunity to comment, before any final decision is taken.
30. It will often be apparent from the wording of an objection whether it is asking the auditor to consider issuing a public interest report or asking the auditor to seek a declaration from the courts that an item of expenditure is unlawful. If it is not clear, the auditor may wish to seek clarification from the objector, and this can be done after the end of the 30-day period if necessary. In any case, the auditor should still consider the question of whether, in their judgement, the objection concerns a matter in respect of which the auditor could apply for a declaration that an item of account is unlawful in the same way as if the objector had explicitly sought a declaration.
31. If, having completed any initial enquiries that may be required, the auditor decides to accept the objection for consideration, they should write to the objector or their representative to say so.
32. Under section 27(4) of the Act, the auditor has discretion not to consider an objection where:
 - the cost of the auditor considering the objection would be disproportionate to the sums to which the objection relates (unless the auditor thinks it might disclose serious concerns about how the relevant authority is managed or led);
 - the objection is frivolous or vexatious; or
 - the objection repeats an objection already considered.
33. This is not an exhaustive list and there may be other grounds for deciding not to consider an objection (for example, where the matter clearly falls outside the auditor's jurisdiction).
34. Where an auditor concludes that an objection is either 'frivolous' or 'vexatious', then it is permissible for the auditor not to consider the objection on those grounds. There is no statutory definition or case law assistance in the field of audit law of the terms 'frivolous' or 'vexatious' and so auditors will need to apply their own professional

judgement to such determinations. However, auditors must form their own view as to frivolousness or vexatiousness and not just accept the council's assessment of the individual or subject matter concerned.

35. Deciding whether or not to accept an eligible objection for consideration is a matter of auditor judgement. In many cases, however, where the objection does not clearly fall into any of the categories set out under paragraph 32 above (or there is no other clear reason for not considering the objection), it may be more appropriate to accept the objection for consideration at Step 2 and move to Step 3. This minimises the risk of significant delays occurring between receipt of an eligible objection and the auditor's decision as to whether or not it is accepted for consideration (which may increase the risk of challenge on the basis that a lengthy consideration at Step 2 may indicate that further investigation was in fact appropriate).
36. At this stage, auditors should only conclude whether they will accept the objection for consideration. Where the auditor accepts the objection for consideration, they should reserve judgement on potential courses of action (such as applying for a declaration that an item of account is unlawful or issuing a public interest report), until they have concluded their consideration and decided the objection.
37. If the auditor decides not to accept the objection for consideration, they should provide the objector or their representative with brief reasons in writing explaining why. Auditors are reminded that under section 28(3) of the Act, a right of appeal now exists against a decision to refuse to consider an objection, where it concerns a matter in respect of which the auditor could apply for a declaration that an item of account is unlawful.
38. Following notification of the auditor's decision not to accept the objection for consideration, the objector has 21 days to lodge their appeal with the court, should they so wish. The 21 days begins with the day after that on which the objector receives the auditor's written reasons. Where auditors are otherwise in a position to certify completion of the audit, it is recommended that they wait until the 21 day period has elapsed before issuing the certificate.

Step 3 – considering and deciding the objection

39. In considering an objection, the auditor will inevitably collect a certain amount of information. Some of this will be material to the issue the auditor is looking at and his or her functions and some will not. It is also possible that some of the information gathered as part of considering the objection, and which may form part of the auditor's report, may impact on a third party.
40. The following section contains guidance on sharing material information with relevant parties and on the approach to wider disclosure of material information.

Sharing material information and wider disclosure

41. Sharing material information and inviting representations on it is required in public law as the auditor is exercising quasi-judicial powers. In addition, the rules as to natural justice may apply such that information needs to be shared with those potentially criticised in the process.
42. Under Section 22(12) of the 2014 Act, auditors do not have a right of access to information subject to legal professional privilege. However, authorities will sometimes share legally privileged information with the auditor voluntarily, where it helps to inform their considerations. This can create difficulties for auditors when considering whether to share material information with objectors, as the auditor must balance any legal professional privilege which has not been waived by the audited body with the need to ensure fairness and to give the objectors the opportunity to comment on material documents.
43. Judgements in this area may be finely balanced, so where an auditor is considering sharing material information that includes documents which may be subject to legal professional privilege, they may wish to consider seeking specific legal advice before sharing the information more widely.
44. When sharing material information, auditors should inform the parties of the effect of Schedule 11 of the Act on the information being disclosed. This means that the information should be disclosed only for the purpose of discharging the auditor's functions. The parties receiving the information are not permitted to disclose the information to anyone else, apart from a representative or legal advisor, without the auditor's specific consent, or otherwise as permitted by Schedule 11.
45. In cases where the issues raised by the objection are complex or detailed, auditors may decide to invite the objector or their representative to attend a meeting to discuss the issues in more detail. Where auditors decide to hold such meetings, they should remind the objector or their representative that confidentiality cannot be

guaranteed and that nothing can be considered to be 'off the record'. The auditor exercises public functions and cannot guarantee that information received will not need, in the public interest, to be disclosed subsequently to a relevant party.

46. Paragraph 28 reminds auditors that where an objection is received outside of the 30 working-day period, they should still consider the information as a 'matter brought to their attention' and consider whether any further action may be appropriate in respect of their responsibilities under the Code. Consideration of issues in this way can have implications for the extent of the information that auditors are able to share with the correspondent.
47. Where an auditor wishes to share information with a correspondent and is considering the issue as a 'matter brought to their attention' rather than as an objection, they should seek the authority's permission to share information before taking further action. Where the auditor is unsure whether information can be shared with a correspondent, they may also wish to contact the NAO's LACG Team and consider seeking seek further legal advice.

Deciding the objection

48. When the auditor has completed the investigation into the issue raised or objection made, they will need to make a decision on whether and, if so, what action to take. In doing so, the auditor will take into account the material evidence, the submissions and representations made by the parties involved and any other advice received.
49. The auditor's decision must have followed a fair process, be reasonable, and based on the relevant evidence. Auditors must have taken into account the relevant factors, ignored irrelevant ones, and taken into account any submissions and representations received. If they wish to, auditors may choose to provide provisional views, and share with relevant parties for comment, prior to deciding the objection.
50. Auditors should not decide on the issue or objection until all the material evidence, submissions, representations, and advice have been considered, and having had regard to the general principles set out in this AGN. The level of information that is required will be influenced by the requirement on the auditor to act proportionately.
51. Where the objector has only asked for a public interest report, but has highlighted matters which may give rise to an unlawful item of account, the auditor should, in considering the objection, still consider the question of whether, in their judgement, the objection concerns a matter in respect of which the auditor could apply for a declaration that an item of account is unlawful in the same way as if the objector had explicitly sought a declaration. The auditor will need to be aware that it may not



always be immediately apparent whether or not the subject matter of an objection could involve potential unlawfulness.

52. The auditor must record the reasons for the decision and must also inform the objector or their representative, involved parties, and the council of the reasons for the decision. Common law may require in certain circumstances that reasons for a decision are given to those affected by it.
53. The auditor's decision is subject to the principles of public law and natural justice and can be complained about or challenged in the courts, which means that in deciding what action if any to take, auditors must properly exercise discretion.
54. Following notification of the auditor's decision, the objector has 21 days to lodge their appeal with the court, should they so wish. The 21 days begins with the day after that on which the objector receives the auditor's written reasons. Where auditors are otherwise in a position to certify completion of the audit, it is recommended that they wait until the 21 day period has elapsed before issuing the certificate.

Section 3: Possible Actions by the Auditor in Determining the Objection

55. In determining the objection, the following range of options are available to auditors:

- Public Interest Report
- Application to the courts for a declaration
- Statutory and non-statutory recommendations
- Advisory notices
- Judicial review brought by the auditor

56. These options are not mutually exclusive; auditors may choose to take any, a combination, or none of these actions. While the first two may flow directly from an objection, auditors should also note that these actions are available irrespective of an objection having been made. Further guidance in respect of each option is set out below.

Public Interest Report (PIR)

57. Reporting in the public interest is covered by Schedule 7 of the Act and Chapter 5 of the 2015 Code of Audit Practice. Auditor guidance in respect of PIRs can be found in *AGN 07 – Auditor Reporting*.
58. On receipt of a PIR, the council must publish the report on its website (or if it does not have one, in another way likely to bring it to the attention of people who live in its area), and call a public meeting to consider the external auditor's report and any recommendations in it.
59. The council must consider and respond publicly within a short time-frame of receiving a PIR, usually a month.
60. The external auditor must send a copy to the relevant Secretary of State and to the authority's independent auditor panel¹ (where it has one), but can also send the PIR to anyone they see fit, including the media and other local or national public bodies.

¹ From 2017-18, where the authority has opted into collective procurement arrangements, the auditor should send the report to the specified appointing person (PSAA Ltd).

Application to the courts for a declaration

61. Auditors have a discretionary power to apply to the court for a declaration that an item of account is contrary to law. Section 28 of the Act sets out the auditor's discretionary power to apply to the court for a declaration that an item of account is contrary to law.
62. An application to court for a declaration is a rare occurrence. If auditors determine that an application may be an appropriate course of action, they should contact the LACG team at NAO for further advice.

Statutory recommendations

63. Having considered the objection, the auditor may conclude that they do not wish to issue a PIR, nor apply to the court for a declaration that an item of account is contrary to law. There may, however, still be matters that they wish to bring to the council's attention in connection with the objection. There are powers under the Act to make statutory recommendations which can be either:
 - a **written recommendation** under [paragraph 2 of Schedule 7 of the Act](#) ("a Schedule 7 recommendation"); or
 - a **recommendation under section 27 of the Act** ("a section 27 recommendation").
64. Section 4.3 of the Code sets out the auditor's responsibilities in respect of recommendations, and further guidance can be found in AGN 07.
65. **Schedule 7 recommendations** are those made under [paragraph 2 of Schedule 7 of the Act](#). This sets out a power for making a written recommendation which places statutory requirements on audited bodies in terms of what they must do in consideration of, and response to, being given such a recommendation by the auditor.
66. **Section 27 recommendations** are those made under [section 27 of the Act](#), which gives auditors the power (where the auditor has decided not to make a PIR or seek a declaration) to make recommendations relating to actions that the authority should take in response to the objection. However, these differ from Schedule 7 recommendations, as they do not place any statutory requirements on the body in terms of considering or responding to the recommendation.
67. Auditors may wish to consider the use of a section 27 recommendation where they wish to bring a matter in respect of an objection to an audited body's attention, but where it may be disproportionate to require the body to put in place additional

arrangements, and incur additional cost, in order to formally consider the matter and respond to the recommendation.

Advisory notices

68. The purpose of an advisory notice is to bring a pause into a situation to enable the audited body (and the auditor) to think about the course of action or decision being taken and for the audited body to decide whether it will continue with that course of action or decision.
69. Schedule 8 of the Act sets out the powers and procedure for serving an advisory notice on an audited body.
70. The issue of an advisory notice is a rare occurrence. If auditors determine that an advisory notice may be an appropriate course of action, they should contact the LACG team at NAO for further advice.

Judicial review brought by the auditor

71. Auditors are able to apply for judicial review where there is a decision or failure to act 'which it is reasonable to believe would have an effect on the accounts of that body'². This power is wider than that of an auditor to apply for a declaration that there is an item of account contrary to law because it can be used prospectively before an item of account has arisen. Section 31 of the Act sets out the power of an auditor to apply for judicial review.
72. An application for judicial review is a rare occurrence. If auditors determine that an application may be an appropriate course of action, they should contact the LACG team at NAO for further advice.

² Section 31 of the Act.



Other Support and Raising Technical Issues or Queries on this AGN

73. Information supporting auditors is available on the LACG extranet. This provides additional context and links to useful information sources where relevant. Updates will be communicated through the Weekly Auditor Communication (WAC). If there is a need for further statutory guidance during the year, the NAO may issue an addendum to this AGN.
74. Auditors in firms should raise queries within the firm, in the first instance, so that the relevant technical support service can consider whether to refer queries to the NAO's Local Audit Code and Guidance (LACG) team by e-mailing LACG.queries@nao.gsi.gov.uk.
75. The NAO also engages with the firms through its Local Auditors' Advisory Group (LAAG) and supporting technical networks to consider any emerging regime-wide technical issues on a timely basis. Auditors should follow their in-house arrangements for bringing significant emerging issues to the attention of their supplier's representative on LAAG or the relevant technical network.