

REPORT TITLE: MONITORING OFFICER'S ANNUAL REPORT

9 JUNE 2021

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WARD(S): ALL

PURPOSE

This is the first annual report of the Monitoring Officer and its purpose is to update members of the Audit and Governance Committee and provide an overview of the work of the office of the monitoring officer. Reporting provides an opportunity to review and learn from experience.

The report also gives Members of the Audit and Governance Committee background information to facilitate the carrying out of their functions. The Monitoring Officer's report sets out her statutory responsibilities and summarises how those duties have been discharged in accordance with legislation and the council's constitution. Where necessary the report can draw attention to those issues requiring attention in the coming year.

RECOMMENDATIONS:

1. That the Audit and Governance Committee notes the Monitoring Officer's Annual Report.

IMPLICATIONS:**1 COUNCIL PLAN OUTCOME**

- 1.1 This report demonstrates a commitment to being an open and transparent council.

2 FINANCIAL IMPLICATIONS

- 2.1 None relating to this report.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 There are no procurement implications and relevant legislation is covered in the body of the report, by its nature.

4 WORKFORCE IMPLICATIONS

- 4.1 The office of the Monitoring Officer is made up the monitoring officer, two deputy monitoring officers and support from democratic services.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 There are no property or asset implications.

6 CONSULTATION AND COMMUNICATION

- 6.1 A successful Monitoring Officer is one who has good working relationships with relevant senior politicians and senior officers. The current Monitoring Officer has forged those relationships in particular with group leaders, group managers, the chair of this committee, the head of paid service and section 151 officer.

7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 There are none relating to this report.

8 EQUALITY IMPACT ASSESSMENT

- 8.1 None arising from the content of the report, although officers will have regard to the considerations as set out in the Equalities Act 2010 and whether an equality impact assessment will be required to be undertaken on any specific recommendations or future decisions made. This report is not making any decisions and is for noting and raising issues only.

9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 None required for this report which does not name individuals or process personal data.

10 RISK MANAGEMENT

- 10.1 Risks in respect of the office of the Monitoring Officer relate to legal challenge and reputation. Each individual complaint is not risk assessed in the traditional sense but the office are usually dealing with individuals who, at the point in time they have made contact with us, are emotional whether that be deeply upset or incredibly angry and all the emotions in between. Care has to be taken to deal with these matters sensitively without showing bias or pre-determination in any matter.

11 SUPPORTING INFORMATION:

The Role of the Monitoring Officer

- 11.1 The role of the Monitoring Officer derives from the Local Government and Housing Act 1989. The Act requires local authorities to appoint a Monitoring Officer. The Monitoring Officer has a broad role in ensuring the lawfulness and fairness of Council decision making, ensuring compliance with Codes and Protocols and promoting good governance and high ethical standards. This report covers the period since the current Monitoring Officer was appointed in May 2019 (when she was the Corporate Head of Resources) to now (when she is one of the Strategic Directors). The Monitoring Officer does not have to have formal legal training but have access to legal advice if not so qualified. The current Monitoring Officer is a solicitor.

A Summary of the Monitoring Officer's Functions is as follows:

Description	Source
Report on contraventions or likely contraventions of any enactment or rule of law	Local Government and Housing Act 1989
Report on any maladministration or injustice where the Ombudsman has carried out an investigation	Local Government and Housing Act 1989
Appoint a Deputy	Local Government and Housing Act 1989
Establish and maintain the Register of Members' interests	The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 The Localism Act 2011 The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
Report on sufficiency of resources	Local Government and Housing Act 1989

Description	Source
Maintain the Constitution	The Constitution
Promote and maintain high standards of conduct	The Localism Act 2011
Grant Dispensations	The Localism Act 2011 and delegation from Council
Consulting with, supporting and advising the Head of Paid Service and s.151 Officer on issues of lawfulness and probity	The Constitution
Appointing an Investigating Officer in relation to Member Complaints	The Localism Act 2011 and the Constitution
Advising the Audit and Governance Standards Sub Committee in relation to allegations of breaches of the Code of Conduct and advising when matters are determined following an investigation	The Localism Act 2011
Advise on whether executive decisions are within the Budget & Policy Framework	The Constitution
Provide advice on vires issues, maladministration, financial impropriety, probity, Budget and Policy Framework issues to all members	The Constitution and s.5 of Local Government and Housing Act 1989
Legal Advice and Support to the authority alongside legal services	The Constitution
Considering whether certain Information is exempt from disclosure under the Freedom of Information Act	Freedom of Information Act 2000

The Constitution

- 11.2 The Constitution sets out how the council operates and how decisions are made. It sets out the procedures which are followed to ensure that decisions are efficient, transparent and that those who make the decisions are accountable for them. The Monitoring Officer is responsible for ensuring that the Constitution operates efficiently, is properly maintained and followed.
- 11.3 Prior to the current Monitoring Officers appointment, the Council had made a commitment to undertake a review of the Constitution. A cross party Member Working Group undertook this work supported by the officer team. This work began in early 2017 and was completed, with the adoption of a new Constitution, at an extraordinary meeting of Full Council in March 2019.
- 11.4 The new constitution has worked well in practice but there was always the intention to undertake a light touch review of its effectiveness. This work started in the autumn of 2019 but due to the COVID-19 pandemic has unfortunately not yet been completed. This has though allowed the Monitoring Officer to consider more recent publications which are of interest,

for example the Model Code of Conduct, updated most recently in May 2021 and subsequent guidance issued at the end of 2020 with the first final code.

- 11.5 It is noteworthy to recognise that the COVID-19 pandemic did not require any urgent revisions of the constitution to allow either officers or named members to take additional or further delegated decisions. In addition no urgent decisions were taken due to the COVID-19 pandemic and all decisions were taken and made through the usual Cabinet and Committee routes, albeit virtually.

Statutory Monitoring Officer Reports

- 11.6 There were no occasions where the Monitoring Officer had reason to believe that there was a likelihood that the Council was about to take a decision that would be unlawful or give rise to maladministration. Consequently, no reports have been issued to the council under Section 5(2) of the Local Government and Housing Act (1989).

Complaints

- 11.7 Since the Audit and Governance committee meeting on 25 July 2019 the quantum of complaints made to the Monitoring Officer have been reported to this committee as part of their quarterly governance report. In the last quarterly report (February 2021) the office of the Monitoring Officer has also reported the number of enquiries they have received, as this has, certainly in 2020/21, taken up the majority of time and resource.
- 11.8 A summary of complaints in the year 20/21 is reported below;

11.9 District Councillors

- 3 complaints closed – no further action. All were planning related.
- 2 complaints heard by the Standards Sub-Committee – 1 found a breach and the other found no breach.
- No complaints are currently under investigation
- 4 complaints currently being assessed by the Monitoring Officer and Independent Person. Of those 3 are planning related.
- 1 complaint on hold – as the matter is being investigated by the Police.

Parish Councillors

- No complaints closed – no further action.
- No complaints have been heard by the Standards Sub-Committee.
- There are 12 complaints against the same Parish, different councillors, currently under investigation.

- 1 complaint currently being assessed by the Monitoring Officer and Independent Person and is planning related.
- No complaints are on hold.

The table below provides the total numbers for the Issues raised and discussed with the office of the Monitoring Officer since first reported to the Audit & Governance Committee on 4 March 2021.

	Number of issues raised	Comments
District Councillors	16 issues raised by email or phone	None have led to receipt of complaint to date.
Parish/Town Councillors	18 issues raised by email or phone	None have led to receipt of complaint to date.

Gifts and hospitality declarations

- 11.10 There has been one declaration made this year by a councillor. This is lower than usual in respect of councillors but to be expected due to the impact of the COVID-19 pandemic restriction.
- 11.11 The complete list of declarations by members and officers of receiving gifts and hospitality is given in the table below and is also regularly reported in the quarterly governance monitoring report

Declarations of Gifts and Hospitality 2020/21	
Date registered	
officer	04/08/21
officer	17/09/21
officer	20/10/21
officer	15/12/20
officer	20/01/21
officer	20/01/21
officer	21/01/21
officer	21/01/21
officer	02/02/21
officer	11/02/21
member	25/02/21
Total 11	

Monitoring Officer Observations

- 11.12 There has certainly been an increase in issues around the comments from councillors that have been picked up on the audio of virtual meetings that perhaps were not previously picked up where perhaps members of the public were sat some distance away from the councillors.
- 11.13 The Monitoring Officer would also observe that Clerks in the Parishes have had a difficult year dealing with some difficult behaviours and this is likely to represent our biggest workload that does not lead to a complaint being made formally.
- 11.14 Clearly the table above indicates a particular problem in one area of the district relating to a Parish Council but as this matter is currently still under investigation it would not be appropriate to comment any further.
- 11.15 Whilst planning decisions make up a large percentage of the corporate complaint process, these have this year spilled into Code of Conduct complaints with a number closed and a number in the very early stages of the process. The 2 deputy Monitoring Officers sit frequently as legal advisors to the planning committee and will report to the Monitoring Officer for further action if needed. Further action may involve speaking to the Group Leaders and/or Managers.
- 11.16 The caseload this year has been high. Unprompted, one of our Independent Persons has recently confirmed that he also considered the caseload to be unusually high. In addition he praised the office of the Monitoring Officer for the efficient and methodical way we deal with complaints.
- 11.17 In respect of the Independent Persons, one has recently resigned due to their relocation to the Midlands. If any members, with experience of hearing complaints, are interested in assisting the Monitoring Officer with the likely interviews please let her know. An adjoining authority recently had over 100 applications for three available positions.
- 11.18 Previous training for members of the Code of Conduct has mixed all councillors together whether experienced or brand new. The Monitoring Officer this year has split those sessions – one for new members and another for everyone else. Training for experienced members will cover more case studies as well as both sessions covering the complaints process, which has not previously been part of this training.
- 11.19 The Monitoring Officer has also discussed member induction with the Deputy Leader throughout the year and is proposing a new follow-up session in September with the Monitoring Officer and all corporate heads of service once new members have done a full cycle of meetings.

Code of Conduct

- 11.20 The Code of Conduct was updated as part of the review of the Constitution, adopted in March 2019 by Full Council. The code was streamlined and language simplified, as well as flowcharts and processes added to that part of the Constitution.

Code of Conduct Review

- 11.21 In respect of Declarations of Interest the March 2019 covering report to Full Council said this;

“Members are referred to the Code of Conduct in Part 5 of the Constitution at pages 229-234. Appendix A to the Code of Conduct at pages 235-236 sets out the arrangements for the Declarations of Disclosable Pecuniary Interests and Non-Pecuniary Interests.

The definition of non-pecuniary interests at page 230 is in the form agreed by the joint meeting of the Overview and Scrutiny Committee and Standards Committees Members on 19 February. It is therefore presented in full form to the Members, also with agreement of the Working Group.

There is one matter that remains to be settled, that is not the subject of cross-party agreement. This related to whether or not the definitions of those bodies which a Member may be in which are directed to charitable purposes or which include bodies whose principal purpose is to influence public opinion or policy should be expanded and if so in what form. It is open to Members to agree a list of organisations that Members are required to disclose on their form.

Furthermore, Members will wish to note the following matters that were outlined to the informal standards committee - The committee on Standards in Public Life published a report on Local Government Ethical Standards in January 2019 with detailed recommendations to alter the statutory arrangements that government declarations of interests by members/investigation procedures/ sanctions for breaches of the Code of Conduct, etc. The Report is subject to a government decision to legislate”

- 11.22 Essentially the changes in respect of interests not legislated on moved away from the historical references of personal and prejudicial interests and sought to simplify to non-pecuniary interests.

- 11.23 A decision in August 2020 of the Standards Sub-Committee (a sub-committee of Audit and Governance) stated “The point relating to DPIS has taken on more significance now because the provisions on personal and prejudicial interest no longer appear in the current version of the Code of Conduct. In our view this must be reviewed urgently in order to ascertain whether there is a gap in the Code in which a person with a significant personal interest can

nonetheless participate in a meeting which decides matters which are likely to affect that interest.”

11.24 The current adopted code in relation to these interests states;

Non-Pecuniary Interests

Within 28 days of becoming a member of the Council, each member must register any Non-Pecuniary Interests (NPIs) (and notify the Council’s Monitoring Officer of any changes thereafter within 28 days). These are such Non-Pecuniary Interests as from time to time are referred to on the Register of Members’ Interest form. (These requirements are determined by the Council in its discretion or by legislation and statutory guidance. Members may participate in any discussions or debates relating to or concerning any NPIs after the date of registration. (See Appendix A to this Code)

Part 2 - Description of categories of Non Pecuniary Interests

- 1) Membership of any body of which they are a member or in a position of general control or management and to which they were appointed or nominated by the Council;
- 2) Membership of any body
 - a) Exercising functions of a public nature (such as another Local Authority);
 - b) Directed to charitable purposes; or
 - c) One of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union); of which they are a member or in a position of general control or management
 - d) Any close friend or relative entering or seeking to enter into a contractual arrangement in any capacity with the Council
- 3) Any person from whom the Member has received a gift or hospitality with an estimated value of at least £50.

LGA Model Code of Conduct

11.25 The decision of the Standards sub-committee referred to above in August 2020 also coincided with the Local Government Association (LGA) consulting on their model code of conduct that same month. The LGA approved their final model code of conduct on 3 December 2020 and have since updated this on 19 January 2021 and most recently 17 May 2021. This code has been designed to protect the democratic role, encourage good conduct and safeguard the public’s trust in local government. A copy of the full model code, including introductory text and further commentary, is attached as appendix 1.

- 11.26 In respect of personal/prejudicial or non-pecuniary interests the model code refers to these as **Disclosure of Other Registerable Interests** (page 10 of appendix 1) and **Disclosure of Non-registerable interests** (page 11 of appendix 1) and states;

Disclosure of Other Registerable Interests

Where a matter arises at a meeting which **directly relates** to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest.

Disclosure of Non-Registerable Interests

Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest.

Where a matter arises at a meeting which affects

- a. your own financial interest or well-being;
- b. a financial interest or well-being of a relative or close associate; or
- c. a financial interest or well-being of a body included under Other Registerable Interests as set out in Table 2 you must disclose the interest.

In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied.

Where a matter (referred to above) affects the financial interest or well-being:

- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Monitoring Officer Opinion

- 11.27 The Monitoring Officer considers that the addition of Disclosure of Non-Registerable Interests above to our current code would address the points raised by the Standards Sub-Committee in their decision in respect of the currently drafted non-pecuniary interests.
- 11.28 In any event the Monitoring Officer proposes to consult with **all members** at their code of conduct training, which is happening later this month, before presenting an updated code of conduct to this committee and the constitution working group as there are many other aspects to the model code that could, and in the opinion of the Monitoring Officer should, be included – a good example being specific reference to social media.
- 11.29 A separate additional meeting will also be arranged with the members who sat on the August 2020 Standards Sub-Committee to ensure all matters they raised are addressed.

12. OTHER OPTIONS CONSIDERED AND REJECTED

Not updating this committee or reporting on these matters was not an option for the Monitoring Officer.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

None.

Other Background Documents:-

None.

APPENDICES:

LGA Model Code of Conduct

<https://www.local.gov.uk/sites/default/files/documents/Local%20Government%20Association%20Model%20Councillor%20Code%20of%20Conduct%202020%20WEB.pdf>