

REPORT TITLE: MONITORING OFFICER'S ANNUAL REPORT 2021/22

10 NOVEMBER 2022

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WARD(S): ALL

PURPOSE

This is the second 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.

RECOMMENDATIONS:

1. That the Audit and Governance Committee notes the Monitoring Officer's Annual Report 2021/22.

## 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, a deputy monitoring officer 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 and the deputy 151 officer where it is known the section 151 is retiring.

### 7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 There are none relating to this report.

### 8 EQUALITY IMPACT ASSESSEMENT

- 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 must 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 and this is a function of Full Council. 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 April 2021 to March 2022. 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 vices 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 fundamental review of the Constitution. A cross party Member Working Group undertook this work supported by the officer team. This work took over 2 years, beginning in 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 – particularly the introduction of 2 Policy committees into the Overview and Scrutiny function.

This work started in the autumn of 2019 but was paused during the COVID-19 pandemic. It is in the programme of works to be completed this winter. This work will also incorporate a review of the current code of conduct and where the model code issued by the LGA may offer some improvements.

### **Statutory Monitoring Officer Reports**

- 11.5 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**

- 11.6 Since the appointment of the current Monitoring Officer the quantum of complaints made to the Monitoring Officer have been reported to this committee as part of their quarterly governance report. Since February 2021 the office of the Monitoring Officer has also reported the number of enquiries they have received, as this has, certainly in 20/21, taken up the majority of time and resource, rather than the actual processing of complaints. It is often this early intervention and assistance that prevents a matter from escalating. This has not been so prominent in 21/22 as it was in 20/21.

- 11.7 A summary of complaints made in the year 21/22 is reported below;

#### **11.8 District Councillors**

- No complaints are currently under investigation
- No complaints are on hold

#### **Parish Councillors**

- 14 complaints by 6 individuals are currently being assessed by the Monitoring Officer and Independent Person.
- No complaints are on hold.

There are 3 outstanding complaints from last years 20/21 annual report.

1. A complaint against City Councillors is in its final stages and going through the Maxwellisation stage of the process whereby the complainants have the opportunity to identify any matter in the draft report which they disagree with or requires more consideration (5.3 of members' complaints procedure). This is planning related.
2. A complaint against a City Councillor and is due to be heard by a Standards Sub Committee. This relates to a planning matter.

3. A significant matter of 12 complaints against the same Parish. The investigation has been concluded by the external investigator and this is currently with the Independent person – the report and appendices are significant with over 500 pages and many audio attachments. The Monitoring Officer is meeting with the Independent Person imminently and this matter will be reported back to the Audit and Governance committee by the Monitoring Officer in any event due to its significance.

### **Gifts and hospitality declarations**

- 11.9 There have been only two declarations made this year by a councillor – this is more than the previous year which was put down to the effects of the COVID-19 pandemic.
- 11.10 There have been 4 officer declarations made this year. The officer threshold is much lower at a £5 limit.
- 11.11 Both officer and member declarations are regularly reported in the quarterly governance monitoring report that comes to this committee. Reminders of the requirements of these declarations go in both member communication in the DSU and for Officers through City Voice.

### **Monitoring Officer Observations**

- 11.12 Last year there was a noticeable 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. This has not been the case this year but the continuing use of audio recording of meetings has assisted greatly with cases this year where the Monitoring Officer and Independent Person can listen to the meeting. This has particularly assisted with one case where 2 different transcripts were presented as evidence of the same meeting.
- 11.13 The Monitoring Officer would observe the continuing trend of Clerks in the Parishes having 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. This will be discussed with the incoming Monitoring Officer about how the City Council may be able to assist the Parishes further, acknowledging there are limited resources available, but this may ultimately reduce the caseload.
- 11.14 Whilst planning decisions make up a large percentage of the corporate complaint process, these have continued to spill into Code of Conduct complaints but this is a trend seen by most councils with responsibility for the LPA. No issues have been raised by the officer team to this committee – whether the lead officer or legal advisors to the committee.
- 11.15 Previous training for members of the Code of Conduct had mixed all councillors together whether experienced or brand new. The Monitoring

Officer in 20/21 held a targeted training session for new members and this was the same for May 2022 intake of new Councillors.

### **On-going work for 22/23**

- 11.16 Whilst not relevant to the annual report of the Monitoring Officer which focuses on the year 21/22 it is helpful for members to understand the ongoing work being undertaken currently. Priority is with clearing the caseload as there have been delays this year with the departure of the Deputy Monitoring Officer who left in June. Good progress has been made in the last 6/8 weeks and additional resource was sourced in August to assist and is proving effective.
- 11.17 The light touch Constitution review, as mentioned above, is also outstanding. This work is being undertaken by the current Monitoring Officer before she leaves at the end of January 2023. The new Monitoring Officer is due to start with the Council in January 2023. An important handover conversation will be around member training on the code of conduct.

### **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:-**

AG052 June 2021.

#### **Other Background Documents:-**

None.

### **APPENDICES:**

None.