

Division(s):

AUDIT & GOVERNANCE COMMITTEE – 8 JULY 2015

ANNUAL MONITORING OFFICER REPORT

Report by the Monitoring Officer

Introduction

1. The Audit and Governance Committee is responsible for promoting standards of conduct for elected councillors and co-opted members and for ensuring the integrity of the democratic decision-making process. Consequently, the Monitoring Officer reports annually to this Committee on relevant actions and issues that have occurred in the previous year. This report therefore summarises certain activities for the year 2014/15.

The Committee's responsibilities for ethical standards

2. The terms of reference of the Audit and Governance Committee contain the following roles:
 - To promote high standards of conduct by councillors and co-opted members
 - To grant dispensations to councillors and co-opted members from requirements relating to interests set out in the code of conduct for members
 - To receive report from member-officer standards panels appointed to investigate allegations of misconduct under the members' code of conduct.
 - To advise the Council as to the adoption or revision of the members' code of conduct.
3. This regime, stemming from the Localism Act 2011, demonstrates the Council's expectation that high standards of conduct will continue to be promoted and maintained among elected councillors and co-opted members.

Standards in Oxfordshire – overview of arrangements

4. The county, district and city councils in Oxfordshire maintain harmonised **Codes of Conduct**. This has the benefit of creating transparency and accountability for the public and also clarity of expectation for councillors who may also be members of more than one authority. This harmonisation is itself a key aspect in promoting and maintaining high standards across Oxfordshire. The Code is also held out to parish and town councils as a model to follow.

5. While each authority has adopted slightly different approaches to **handling complaints** about councillor conduct, there is a common theme of proportionality in these arrangements, as envisaged by the Localism Act. The Council has recruited an independent person as envisaged under the Act, to support these arrangements. The Monitoring Officer is in the process of recruiting a further independent person to buttress the sustainability of the arrangements.
6. In brief, the complaints process adopted by Oxfordshire County Council is as follows:
 - Each complaint is considered by the Monitoring Officer who, after consultation with the Independent Person, decide whether it merits formal investigation
 - The Monitoring Officer may seek to resolve issues informally without the need for formal investigation
 - The Monitoring Officer will determine the procedure to be adopted if a formal investigation is considered appropriate and this may involve the appointment of an Investigating Officer
 - The member complained of will normally be provided with a copy of the complaint
 - Following an investigation a report will be prepared for the Monitoring Officer, copied to the member concerned
 - Following consultation with the Independent Person the Monitoring Officer may decide that the report is sufficient and that no further action is required
 - If there is evidence of failure to comply with the Code, the Monitoring Officer will either seek local resolution or constitute a local hearing through a Member Advisory Panel
 - A Members' Advisory Panel may only recommend certain sanctions:
 - Censure or reprimand
 - Publish its findings
 - Report its findings to full Council
 - Recommend removal from relevant body e.g. Cabinet, Committee etc.
 - Recommend training
 - Withdraw facilities
 - There is no right of appeal
7. The Members' Advisory Panel will be formed of members of this Committee.
8. In addition to these measures, the Council has implemented Register of Interests arrangements that are fully compliant with the Localism Act and subsequent government guidance and regulations.

Democratic process

9. Clarity and accountability in the decision making of the Council is an important bedrock for good member governance. During 2014-15, the Monitoring Officer undertook a comprehensive review of the Constitution, involving members widely in the process. One of the member-led changes adopted as a result of the review was the reintroduction of gifts and hospitality register and protocol for members. While no longer a statutory requirement, members considered that it was in the interests of transparency and accountability that councillors and co-opted members should have the separate facility to register the offer of gifts and hospitality, should they wish to use it rather than the catch-all box on the register of interests form. Members will be reminded of this new facility alongside the six monthly requests to members to update their register of interest entries, the next being this summer.
10. Given the Committee's role in overseeing good member governance, it is also appropriate to update this Committee from time to time on the exercise of aspects of this structure including:
 - Closed sessions – instances where the public have been excluded from meetings by virtue of the business being transacted
 - Cabinet Forward Plan – instances in which exceptions have occurred to the inclusion of items in the Forward Plan
 - Scrutiny call-in – instances where exemptions to the call-in procedures have been awarded by virtue of urgency of the business in question
 - Chief Executive decisions – instances where the Chief Executive has used delegated powers to undertake any function of the Cabinet

Closed Sessions

11. The public can be excluded from the whole or part of a meeting if the meeting is to discuss confidential or exempt information (as set out in Schedule 12A of the Local Government Act 1972, as amended). The Monitoring Officer, in his role of ensuring lawful decision making, has reviewed the number of times this has happened over the past year. The results are set out in the **Annex 1** to this report. In each case, the Monitoring Officer is satisfied that the reasons for closure were appropriate.

Cabinet – Forward Plan

12. Items for decision by the Cabinet over any forthcoming four-month period are included in a Forward Plan. Occasionally, decisions are needed on items that have not been included on a Forward Plan. These are dealt with by General Exception notices to the Forward Plan. The Monitoring Officer reviewed the instances in which this occurred and was satisfied with the reasons in each case. **Annex 2** lists the instances. It also lists items included as a matter of special urgency plus additional non-key-decision items.

Scrutiny Call-In

13. The Council's Scrutiny Procedure Rules (Rule 17a) allow for executive decisions to be exempted from call-in if they are deemed urgent and any

delay would prejudice the council's interests. There were **eight** such instances in 2014/15 and these are listed in **Annex 3**.

Chief Executive Decisions

14. Under the Council's Constitution, the Chief Executive has delegated powers to undertake any function of the Cabinet after appropriate consultation. Any exercise of this function is reported to the Cabinet. During the year 2014/15 this delegation was exercised on 8 occasions; six were related to exemptions to the requirements of the Contract Procedure Rules and required (and received) a legal (County Solicitor) and financial (Chief Finance Officer) and procurement (Service Manager – Procurement) appraisal.

The Monitoring Officer

15. Monitoring Officers from Oxfordshire's county and district councils have continued to meet together to discuss issues of common concern. This comparison of experiences has been particularly useful in monitoring the operation of the harmonised codes of conduct and the registration of members interests. It also proved useful through the development of Special Interest Groups – which involve the sharing of good practice around a range of legal, democratic and electoral issues which are then reported to the overall Monitoring Officer group. During the year, a special interest group was also established for Contracts and Procurement.

Restructure

15. During 2014/15 there was a proposal as to whether the Council should operate without a Chief Executive. As the matter gave rise for concern by some members as to the procedure followed, it is worth mentioning this point in this Annual Report.
16. At the Full Council meeting of the 17 February 2015, a decision was taken relating to the restructuring of the Senior Management Team of the Council resulting in the deletion of the post of Chief Executive. Following that decision, a Notice of Dismissal was issued to the Chief Executive.
17. The rationale for the restructuring was set out in an earlier report of the County Solicitor and concerned the need to introduce a new operating model to address the serious funding challenges and embrace a more distributed model of managerial leadership. Concerns were raised by some members regarding the legality of the process that was followed in the light of the Local Authorities (Standing Orders) (England) Regulations 2001. Arguably there should have been a two-stage process (i.e. a decision by Council to dismiss subject to a view expressed by the executive, and then consideration of whether to approve that decision following notification to members of the executive).
18. I therefore determined as Monitoring Officer, under my statutory powers under the Local Government & Housing Act 1989, that the matter should be returned

to Full Council and that the previous decision be rescinded. This was to allow a further consideration of the restructuring and to take member views into account and then to follow a process that clearly followed the legal and constitutional requirements. This was done and, in the event, Council did rescind the decision and also determined not, at that time, to delete the post of Chief Executive. In short, this has been a matter of learning for me and the organisation in dealing with such matters in future.

Modern.Gov, transparency and access

20. Modern.Gov is the software package adopted by the Council (and also used in some district councils across Oxfordshire) for creating, tracking and publishing council meeting agendas, reports and minutes. It also contains a module for elections which was initially successfully used in the May 2013 county council elections and a subsequent by-election, and has again been successfully used in connection with the Leys and Witney West & Bampton by-elections.
21. The system also manages the Council's Forward Plan and councillors' web pages are also updated using information from the system, including responsibilities (such as Chairman or Cabinet Member), committee appointments, as well as appointments to outside bodies. The system is also able to publish (on the website) parish council contact names and details.
22. The Constitution Review during 2014-15 resulted in a Council decision to cease operating the e-petition scheme. The withdrawal of the petition scheme reflected the fact that it was no longer statutory and arrangements for the public to submit petitions were covered in any case within the Council's Constitution.

To Promote and Maintain High Standards of Conduct by Councillors and Co-opted Members

23. It is a core duty of this Committee to promote and monitor high standards of conduct by councillors and co-opted members.
24. During 2014-15, the Monitoring Officer continued the process of member development and conference attendance. Targeted sessions were also held for the Audit & Governance Committee generally and for the members of its Appeals & Tribunals Sub-Committee. Induction sessions were also held for the successful candidates duly elected at by-elections, including Code of Conduct and (as appropriate) Planning Code of Practice sessions.
25. In addition, the Monitoring Officer issues guidance to members (by email) to give advice on a number of topics including:
 - Disclosable Pecuniary Interests
 - Dispensations with regard to the February budget setting meeting
 - Deadlines for Cabinet questions

- Giving apologies and arranging substitutions for attendance at meetings

To advise the Council as to the adoption or revision of the members' code of conduct.

26. To enable the Committee to advise the Council on adopting or revising a members' code of conduct, it is important that the Committee is kept up to date with any issues arising from the operation of the code, both in terms of experience and any future amendments to the regulations or legislation.

Bias and predetermination

27. As part of the review of the Council's Constitution, the Monitoring Officer also revised, in conjunction with his colleagues in the city and district councils, a protocol for handling bias and predetermination.

Declaration of interests

28. There is still a requirement to declare disclosable pecuniary interests at meetings if they are not otherwise included in the Register and to register them thereafter. Declarations need to be made unless a dispensation has been given. It is useful for this Committee to be updated on the instances in which these provisions have been observed.
29. The usual safeguards are in place including a reminder to members of the need to declare interests at all meetings, and all agendas contain a standard item headed "Declarations of Interest". The item refers to detailed guidance attached to the agenda setting out how and when to declare an interest.

Number and Outcome of Applications for Dispensations

30. There have been no applications for dispensation.

The Number and Nature of Complaints of Breaches of the Code

31. There have been **six** complaints against members during 2014-15. One complaint was withdrawn; one is still under consideration but of the others no breach of the code was found. The complaints can be summarised as follows:

Complaint/allegation	Outcome
Undue interference in staffing matters at a school	Withdrawn
Behaviour of councillor as chairman of public meeting	No breach
Misuse of councillor budget	No breach
Inappropriate comment on blog	No breach – voluntary apology given

Discriminatory remark	No breach
Inappropriate representations made to a Committee	Pending resolution

Members' allowances and a review of councillor demography

32. During 2014-15, a full review of the Council's members' allowances scheme was carried out by the Independent Remuneration Panel. The Panel made recommendations to Full Council which accepted the recommendations. Each councillor's preference as to the amount of basic or special allowance to take was respected and double-checked with Payroll.
33. Another outcome of the Panel's recommendations to Council was an agreement to establish a councillor demography working group to consist of members of this committee, with a view to identifying any actions the Council could legitimately take to encourage a greater diversity of councillors. This has now been appointed and will meet within 2015-16 to identify potential actions.

Summary

34. This annual review highlights the progress that has been made in implementing the code of conduct for members and in promoting and maintaining high standards of conduct and public accountability.

RECOMMENDATION

35. **The Committee is RECOMMENDED to consider and endorse the report.**

P G CLARK
Monitoring Officer & County Solicitor

Background Papers: Nil

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