

## **Divisions Affected – ALL**

### **AUDIT AND GOVERNANCE COMMITTEE 18 September 2024**

#### **Annual Monitoring Officer Report 2023-24**

**Report by the Director of Law & Governance and Monitoring Officer**

#### **RECOMMENDATION**

1. The Committee is recommended to consider and endorse the report

#### **Executive summary**

2. This report gives an overview from the Monitoring Officer of democratic and ethical governance activity, during the municipal year 2023-24 (1 April 2023 to 31 March 2024), in relation to the functions of the Audit and Governance Committee.

#### **The Committee's responsibilities for ethical standards**

3. The terms of reference of the Audit and Governance Committee contain the following responsibilities:
  - 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. General dispensations remain in force for a period of 3 years, and the granting of individual dispensations under Section 33 of the Localism Act 2011 and the Members' Code of Conduct is delegated to the Monitoring Officer.
  - To receive reports from Member Advisory Panels, appointed to investigate allegations of misconduct under the Members' Code of Conduct (this reflects the terms of reference of the Audit and Governance Committee in operation in 2023-24 – the Council no longer operates Member Advisory Panels).
  - To review the arrangements for dealing with complaints against Members and to advise the Council as to the adoption or revision of these arrangements as well as the Members' Code of Conduct.
4. These responsibilities, stemming from the Localism Act 2011, demonstrate the

Council's expectation that high standards of conduct will continue to be promoted and maintained among elected councillors and co-opted members.

## **Member Code of Conduct**

5. 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 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.
6. Oxfordshire's Members' Code of Conduct can be found at Part 9 of the Constitution. This local Oxfordshire code reflects the Local Government Association's (LGA) published Model Member Code of Conduct, published in January and May 2021.
7. Whilst each authority has adopted slightly different approaches to handling complaints about councillor conduct, there has been a common theme of proportionality in these arrangements, as envisaged by the Localism Act 2011.
8. The revised Member Code of Conduct was adopted with effect from 1 May 2022.
9. Having operated the previous arrangements since January 2021 the Monitoring Officer carried out a review of the Council's arrangements for dealing with code of complaints against members during 2023-24. This review was undertaken to achieve greater clarity of process and responsibilities for the benefit of both the public and members themselves.
10. The Audit and Governance Committee considered the revised arrangements on 13 March 2024 and recommended that Council approve them. Council subsequently approved the revised arrangements on 16 April 2024.
11. Mr Martyn Hocking and Mr Nicholas Holt-Kentwell were the Council's Independent Persons throughout 2023-24. They provided support to the Monitoring Officer and, where required individual members, on complaints relating to the code of conduct. Mr Hocking and Mr Holt-Kentwell have served as Independent Persons since 14 July 2020 and their second two-year term was due to end on 13 July 2024. This has been extended by Council until 30 November 2024 to allow a recruitment campaign to be undertaken for new Independent Persons. Interviews will be undertaken by the Monitoring Officer and Chair and Deputy-Chair of the Audit and Governance Committee. The Monitoring Officer will report the outcome of this process to this committee, and to Council for appointment, once the preferred candidates for the role have been identified.
12. A summary of code of conduct complaints received, considered and determined during 2023-24 and their outcome, is reported at paragraph 26 below.

13. The Monitoring Officer's role is wherever possible to provide proactive advice to members before any complaint is received. Upon receipt of code of conduct complaints, the Monitoring Officer continues to work proactively with members. The Monitoring Officer may consider that there is learning which should be shared with the councillor who is subject to a complaint and/or the Audit and Governance Committee.
14. The Council has continued to be fully compliant with the Localism Act 2011 and subsequent government guidance and regulations in terms of maintaining the register of members' interests, which are published against each councillor on the Council's website ([Find Councillor | Oxfordshire County Council](#)). For quality assurance purposes, the Monitoring Officer will review all the Council's guidance and processes in respect of the operation of the code of conduct and maintaining the register of members' interests in 2024-25.

### **Member Code of Conduct complaints – promoting and maintaining high standards of conduct by Councillors and Co-opted Members**

15. It is a core duty of the Audit and Governance Committee and every member to promote and maintain high standards of conduct by councillors and co-opted members.
16. Advice from the Monitoring Officer was issued during the year as regards:
  - Disclosable pecuniary interests
  - Interests in relation to the Council budget setting meeting in February
  - Pre-election guidance to councillors and employees on responsibilities about the use of council publicity and resources during the pre-election periods for the May 2024 District Council and Police Crime Commissioner Elections.

### **Declaration of interests**

17. There are three types of interest relating to members:
  - i) Disclosable pecuniary interest – this is an interest of the member, or their partner. This includes employment, office, trade, profession or vocation, sponsorship, contracts, land and property, licences, corporate tenancies and securities.
  - ii) Registrable interest – this is an interest of the member relating to
    - Any unpaid directorships
    - Any body of which they are a member or are in a position of general control or management to which they are appointed to by

the Council.

- Any body exercising functions of a public nature, directed to charitable purposes or one whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)
- iii) Non-registrable interest - Where a matter arises at a meeting which directly relates to a member's financial interest or wellbeing (and does not fall under disclosable pecuniary interests), or the financial interest or wellbeing of a relative or close associate, they must declare the interest.
18. 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.
19. The Monitoring Officer will continue to encourage Councillors to think about whether they have any interests to declare as soon as they receive the published papers for a meeting rather than at the commencement of the meeting. This will allow the Councillor to discuss any concerns with the Monitoring Officer in good time.

### **Number and outcome of applications for dispensations**

20. There were no applications for dispensation from the requirement to remove oneself from a meeting where a disclosable pecuniary interest would otherwise require this. A dispensation relating to a non-registrable interest on a motion was granted by the Monitoring Officer on one occasion for a member to remain in a Council meeting.

### **The number and nature of complaints of breaches of the code**

21. There were 19 formal complaints determined against members during 2023-24 (24 in 2022-23), three of which were about the same social media issue, and a further four related to events that took place during a meeting of Council.
22. In each conduct case, the Monitoring Officer considered whether the behaviour complained about arose when the person was acting or purporting to act as a county councillor. This is known as 'official capacity'. Consideration is given to the following assessment criteria:
- **Adequate information**  
Is sufficient information available at the initial test and assessment stage to decide whether the complaint should be referred for investigation or other action?

- **Official capacity**  
Was the member subject to the complaint acting in an official capacity?
- **Timescale**  
Complaints will not normally be investigated or pursued if the events occurred more than 6 months prior to the complaint being submitted other than in exceptional circumstances, such as where the conduct relates to a pattern of behaviour which has recently been repeated.
- **Seriousness**  
The matter will not normally be referred for investigation or other action if it is considered trivial, malicious, vexatious, or politically motivated.
- **Public interest**  
Consideration will be given as to whether the public interest would be served by referring a complaint for investigation or other action.
- **Multiple complaints**  
It will be noted whether the Monitoring Officer has received more than one complaint about a single event.

23. As part of the assessment, the Monitoring Officer assesses whether the conduct complained of, if proven, could amount to a breach of the code of conduct.

24. On each occasion in 2023-2024 that the Monitoring Officer undertook the initial assessment of a code of conduct complaint against the criteria set out above, they sought the views of an Independent Person before reaching their decision as to what action was required.

25. The Monitoring Officer has personally reviewed every complaint received and, after consultation with the Independent Person, has taken a decision which could be any of the following:

- That no further action should be taken
- Refer the complaint for informal resolution (which might involve an apology or training or some other form of mediation)
- Refer the complaint for investigation

26. Of the cases received in 2023-24 that have been determined, details and outcomes are set out as follows:

	<b>Complaint/allegation</b>	<b>Outcome</b>
1-3	Complaint about post on social media	Informal resolution - apology and deletion on social media
4	Complaint about involvement in a highways matter.	No further action
5	Complaint about communication	No further action

6	Complaint about communication	No further action
7	Complaint about matters relating to decision taking.	No further action
8	Complaint about post on social media	No further action
9	Complaint about comments made at a formal meeting.	No further action
10	Complaint about communication	No further action
11	Complaint about post on social media	No further action
12	Complaint about declarations of interest	No further action
13	Complaint about communication	No further action
14	Complaint about matters relating to a Cabinet meeting and correspondence.	No further action
15-18	Complaint relating to a Council meeting	No further action
19	Complaint relating to declarations/conflict of interest.	Training and report to Audit and Governance Committee

### **Member training and awareness raising sessions**

27. The Monitoring Officer, assisted by the Deputy Monitoring Officer and Head of Governance, ran a session on the Member Code of Conduct in April 2023 and this was attended by 25 Members of Council in the live session and recorded to allow members who were not able to attend to access the training later. As requested by the Audit and Governance Committee, a further session will be arranged in 2024-25 on the Member Code of Conduct including interests and issues relating to bias and predetermination.
28. A range of other training and awareness raising sessions for members was held during 2023-24 including Planning, Pensions, Special Educational Needs (SEND), home to school transport, infrastructure development, finance and other topical issues.

## **Oxfordshire Monitoring Officers' Group**

29. Monitoring Officers from Oxfordshire's County and District Councils have continued to meet to discuss issues of common concern, along with a representative of the Oxfordshire Association of Local Councils. This comparison of experiences has been particularly useful in interpreting the code of conduct and monitoring the operation of the harmonised codes of conduct and governance issues generally.

## **Future Council Governance Group**

30. The Future Council Governance Group was established in May 2023 in response to motions presented to the Council on 1 November 2022 relating to governance change, 13 December 2022 relating to Education Scrutiny and 28 March 2023 relating to futures planning and participatory processes.
31. The Audit and Governance Committee received a report on progress with the review on 20 September 2023 and the final report was presented to the Committee on 29 November 2023 before going to Council on 12 December 2023.
32. The Centre for Governance and Scrutiny (CfGS) was engaged to work with the group as it has particular expertise in undertaking local authority governance reviews.
33. Six meetings of the group were held from May to November 2023 which allowed members to have a detailed look at a range of issues.
34. Council noted at its meeting on 12 December 2023 that there was no consensus for changing the form of governance from a leader with cabinet to a committee system. Members believed that it was too late in the current council cycle, with the next election in May 2025, to consider a governance change. It was considered that changing to a different governance model at that time would provide an unnecessary distraction from critical service issues.
35. At the same meeting of Full Council on 12 December 2023 the Council supported the recommendation to establish an Education and Young People Overview and Scrutiny Committee as it was considered that more scrutiny focus was required on young people and in particular Education, with particular coverage of critical areas such as Special Educational Needs.
36. A number of the recommendations related to actions for the Leader and the Cabinet including:
  - i) The development of an integrated forward plan bringing together the individual work plans of the Cabinet and overview and scrutiny committees.

- ii) Providing more opportunities for policy engagement from backbench members.
  - iii) Appointment of deputy cabinet members
  - iv) Making better use of cabinet advisory groups
  - v) Reinvigorating locality meetings and embedding 'futures and foresights' planning across the Council.
37. These proposals went to Cabinet on 23 January 2024 for consideration with further action agreed as appropriate. In particular, the 'future and foresights' planning issue was developed into a future generations mission statement which went to Cabinet for consideration on 23 April 2024.

### **Democratic process**

38. Clarity and accountability in the decision making of the Council is an important bedrock for good governance. Members of the public continue to be able to participate at formal meetings in person or virtually in terms of speaking and addressing meetings, as well as viewing them remotely.
39. In total, 130 formal public meetings were held and facilitated by the committee services team of the Council between 1 April 2023 and 31 March 2024 (87 in 2022-23)
40. There remains a high level of democratic engagement at Council, Cabinet and Committee meetings that are open to the public. Members of the public asked 21 public questions (20), presented 6 petitions (8) and addressed members 331 (305) times at formal meetings during 2023-24. Figures in brackets are for 2022-23.
41. The Council's Education Appeals Panels continued to meet remotely with parents generally welcoming the opportunity to join meetings virtually.

### **Decision-making governance**

42. It is important, though, as in any year, to inform the Audit and Governance Committee of how the decision-making arrangements worked in practice as regards instances of closed sessions, urgent decisions, and instances of call-in.

#### **Closed sessions**

43. The press and 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 the role of ensuring lawful decision making, has reviewed the number of times that either the public was excluded or that an exempt report was featured on an agenda. This happened at 13 meetings during 2023-24 (11 in 2022-23) broken



down as follows:

Remuneration Committee	5
Oxfordshire Health and Wellbeing Board	3
Pension Fund Committee	1
Local Pension Board	1
Planning and Regulation Committee	1
Charlotte Coxe Trust Committee	1
Cabinet Member for Finance	1
Total	13

### **Urgent decisions**

44. The Cabinet and any other body or person discharging executive functions may take a decision which is contrary to or not wholly in accordance with the budget or policy framework as approved by the Council if the decision is a matter of urgency. However, the decision may only be taken if it is not practical to convene a quorate meeting of the full Council; and if consent has been given to the decision being taken as a matter of urgency by the Chair and Deputy Chair of relevant Overview and Scrutiny Committee (or by the Chair and/or Vice-Chair of the Council in the absence of one or both of them).
45. Under the Scheme of Delegation in the Council's Constitution (Part 7.1, paragraph 6.3 (c)(i)), the Chief Executive is authorised to undertake an executive function on behalf of the Cabinet. Cabinet receives a quarterly report on the use of this delegated power in relation to such executive decisions; that is, decisions that might otherwise have been taken by Cabinet. The decisions taken largely related to approval to exceptions from the Council's Contract Procedure Rules.
46. There were 5 instances where the Chief Executive has taken Executive Decisions relating to urgent matters in 2023-24 (11 in 2022-23). These decisions are recorded by Democratic Services and were reported to the Cabinet.

### **Scrutiny call-in**

47. As in 2022-23, no decisions of the Cabinet or made by a Cabinet Member were called in during 2023-24

### **Transparency and access**

48. Modern.Gov is the software package used by the Council for creating, tracking and publishing council meeting agenda, reports and minutes. This is important for transparency as the system publishes clear information on the Council's website

as to the calendar of meetings and the accessibility of meeting papers.

49. Modern.Gov is used to manage the Council's Forward Plan and for publicising meetings and agendas, committee appointments, as well as appointments to outside bodies. The system has wider capabilities to support paperless meetings and report preparation and these are being taken forward through improvement projects as part of the Governance Improvement Plan.

## **Constitution review**

50. The Council has made clear its wish to develop a Constitution that reflects the values of the council and is transparent, accountable, efficient, and accessible. The aim is to achieve a constitution that is inclusive, concise and facilitates accountable decision-making. Achieving this will bring a greater clarity to the Council's governance arrangements in the interests of the public, members and officers.
51. Further work is required to ensure that the Constitution enables the needs of a modern council. A cross-party working group is being established with a view to making recommendations to the Audit and Governance Committee on potential improvements. This work could not be undertaken until the work of the Future Council Governance Group had been completed, as any change recommended, would require a wholesale re-write of the Constitution. Nominations are still awaited from some political groups to enable the working group to start.

## **Members' allowances**

52. At the meeting held on 12 December 2023, the Council agreed to accept the recommendations of the Independent Remuneration Panel Council relating to the increase in members' allowances from 1 April 2023. The increase was in line with the percentage increase in employee costs for Oxfordshire County Council arising from the 2023-24 national pay award. Agreement of the pay settlement for employees was not reached until the Autumn 2023 due to protracted negotiations between the national employers and the unions.

## **Complaints**

53. The number of complaints received by the Council during 2023-24 is summarised as follows under Children Social Care, Adult Social Care and Corporate. All councils are required to process Children Social Care and Adult Social Care complaints in line with statutory frameworks. Complaints made relating to other Council services are categorised as corporate complaints.

Children's Social Care complaints	141
Adult Social Care complaints	127

Corporate (non-Social Care) complaints	328
Total complaints	596

## **Information requests –Subject Access Requests, Court Orders, Police disclosures and Freedom of Information**

54. The Council receives a number of different types of information requests:

- i) Subject Access Requests – Individuals have the right to ask an organisation if it is using or storing their personal information and can request copies under Section 45 of the Data Protection Act 2018.
- ii) Court Orders – Requests for information relating to a matter being heard in Court, such as the Court of Protection or private hearings in the Family Court.
- iii) Police disclosures – Requests received from the Police for information relating to investigations about an alleged criminal offence.
- iv) Freedom of Information/Environmental Information – Anyone has a right to request information from a public authority under the Freedom of Information Act 2000/Environmental Information Regulations 2004.

55. The number of requests received during 2023-24 is summarised as follows:

Subject Access Requests	498
Court Orders	119
Police disclosures	95
Freedom of Information requests	1,955

## **Summary**

56. This annual review highlights the progress in maintaining democratic accountability and transparency with members continuing to undertake their role as community leaders during 2023-24.
57. Encouraging and maintaining high standards of conduct will continue to be addressed in 2024-25 with further member training sessions planned. It is imperative that members and officers set the ethical tone within the Council and model the behaviours that they expect of themselves and others.

## **Corporate policies and priorities**

58. The Council has a stated priority to ensure a vibrant participatory democracy

## **Financial implications**

59. The activities highlighted in this report relate to business as usual and funding is provided as part of the Council budget.  
*Comments checked by – Drew Hodgson, Strategic Finance Business Partner*

## **Legal implications**

60. Relevant references to legal powers are included in the main body of the report. Under S5 of the Local Government and Housing Act 1989 the Council is required to designate an officer as the Monitoring Officer whose responsibilities set out in the Council's Constitution include ensuring lawfulness and fairness of decision making and to contribute to the promotion and maintenance of high standards of conduct through provision of support and advice to the Audit & Governance Committee.  
*Comments checked by – Paul Grant, Head of Legal and Deputy Monitoring Officer*

## **Staff implications**

61. Governance is part of a wider Law and Governance Transformation Programme which has provided more capacity in Democratic Services, Corporate Governance and Scrutiny.

## **Equality and inclusion implications**

62. No direct implications identified

## **Sustainability implications**

63. No direct implications identified

## **Risk management**

64. No direct implications identified

## **Consultation**

65. No direct implications identified

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