

AUDIT AND GOVERNANCE COMMITTEE – 21 September 2022

Annual Monitoring Officer Report 2021/22

Report by 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 year 2021/22, in relation to the functions of the Committee. The report reflects on the implications of the pandemic for democratic decision making, the occurrence of code of conduct complaints and other member-related matters.

The Committee's responsibilities for ethical standards

3. The terms of reference of the Audit & 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
 - 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.
4. 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.
5. The Monitoring Officer during 2021/22 was Anita Bradley, Director of Law & Governance.

Member Code of Conduct

6. 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.

7. Each authority has adopted slightly different approaches to handling complaints about councillor conduct. There has been, though, a common theme of proportionality in these arrangements, as envisaged by the Localism Act.
8. On 14 July 2020, the Council approved the appointment of Mr Nicholas Holt-Kentwell and Mr Martyn Hocking as Independent Persons to support the Monitoring Officer and members in the consideration of Code of Conduct complaints.
9. A summary of the Code of Conduct complaints received and considered during 2021/22 and their outcome, is reported at paragraph 19 below.

Consultation on Model Code of Member Conduct

10. During 2020/21, the Local Government Association, building on work with the Committee on Standards in Public Life, issued a consultation on a proposed Model Code of Conduct for members. This Committee, in fulfilment of its duty to promote high standards of conduct, decided to engage in the consultation and formed a cross-party working group to provide a response. The working group, with views from members of this Committee, broadly supported the Model Code and its emphasis on creating clarity around responsibilities, the importance of good behaviours, particularly in the use of social media, and the creation of national guidance to provide examples of key behaviours.
11. In keeping with the principle that, ideally, a similar Code should be adopted across Oxfordshire, the Monitoring Officers from across the county agreed to work up a potential revised code, based on the model, for consideration by each authority, with a view to potential implementation by May 2022. This Committee will therefore be fully involved in this, later in the year. Progress on this will be dependent on each local authority agreeing to take this forward if the principle that the same Code of Conduct is to be adopted across Oxfordshire.
12. In addition, the Council has continued to be fully compliant with the Localism Act and subsequent government guidance and regulations in terms of maintaining registers of members' interests, which are published on each councillor's web page.

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

13. It is a core duty of this Committee and each and every member to promote and maintain high standards of conduct by councillors and co-opted members.
14. Monitoring Officer advice was also issued during the year as regards:
 - Disclosable Pecuniary Interests
 - Interests in relation to the February budget setting meeting

- Pre-election guidance to staff and councillors on responsibilities about the use of council publicity and resources during the elections in May 2021, the pre-election period commencing on 29 March 2021

Declaration of interests

15. There is 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.
16. 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

17. There have been no applications for dispensation from the requirement to remove oneself from a meeting where a Disclosable Pecuniary Interest would otherwise require this.

The Number and Nature of Complaints of Breaches of the Code

18. There were **8** formal complaints against members during 2021/22 although 4 of these were about the same issue. Taken together, the general theme was about members’ posting comments online via social media platforms – and perceptions as to what behaviours ‘cross a line’. It is clear that the public expect a high standard of behaviour from elected members including on social media.
19. In each case, it is necessary to be clear whether the behaviour complained about arose where the person was acting or purporting to act as a county councillor known as “official capacity”. Secondly had there been an investigation, the consideration would be whether the behaviours were found to have breached the Code of Conduct and if so what if any sanction to impose. On each occasion, the Monitoring Officer also sought the views of the Independent Person at the initial assessment stage when reaching her decision as to what action was required.

Complaint/allegation	Outcome
Complaint 1: Complaint about post made on social media.	Written apology, no formal action.
Complaint 2: Complaint about post made on social media which predated subject Cllr becoming a Cllr.	No action

Complaint/allegation	Outcome
Complaints 3-6: Complaints about posts on social media.	Written apology, no formal action.
Complaint 7: Complaint about Cllr conduct in relation to a division service issue and the level of consultation provided to the public.	No action
Complaint 8: Complaint about post, and motive behind post, on social media.	No action

20. The Monitoring Officer intends, during 2022/23, to review the arrangements for dealing with complaints against members. This is to achieve greater clarity of process and responsibilities for the benefit of members of the public and members themselves. This review was delayed to take account of the revision of the Member Code of Conduct which was adopted on 1 May 2022. The Member Code of Conduct in itself provides an important context for reviewing the arrangements for dealing with any complaints that arise under the Code. The Committee will be kept informed of this work.

Pre-election and induction preparation

21. During 2020/21, the Council made preparations for the May 2021 elections and the implementation of an induction programme for members against a background of uncertainty due to the pandemic.
22. An induction programme was developed giving prominence to the Member Code of Conduct, as well as to the overview of services, legal requirements such as planning law and practice, and skills such as the effective chairing of meetings. The programme was intended to give essential introductions to the senior leadership team, to assist in maintaining open and effective relationships. It was intended that this would provide a platform on which to create further development, owned by members, throughout their term of office.
23. During 2021/22, there is a need for the Council to revisit what member training should be mandatory to help build positive behaviours and skills and to ensure key knowledge for those members serving on regulatory committees or in key roles such as chairing formal meetings. The Monitoring Officer will review this with the Committee and Political Group Leaders.

Oxfordshire Monitoring Officers' Group

24. 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 developing the new code of conduct and monitoring the operation of the harmonised codes of conduct and governance issues generally.

Democratic process

25. Clarity and accountability in the decision making of the Council is an important bedrock for good governance. The Covid-19 pandemic had major implications for the Council's decision-making arrangements, with restrictions on movement and on physical meetings. The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 powers ended in May 2021. The Council put in place appropriate arrangements to hold in person public meetings and continued to allow the public to address committee meetings remotely (virtually).
26. In practice, the Council's decision making made a smooth transition back to in person public meetings. Councillors remained able to engage in hybrid meetings although they are unable to take decisions remotely. Members of the public continue to be able to participate in person or virtually in terms of speaking and addressing meetings, as well as viewing them remotely.
27. In total, 119 formal public meetings were held and facilitated by the committee services team of the Council between 1st April 2021 until 31st March 2022.
28. The Council's Education Appeals Panels continued to meet remotely with no adverse impact to parents or the Council in the delivery of the appeals service.

Decision making governance

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

Closed Sessions

30. 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 18 times over the past year. In each case, the Monitoring Officer was satisfied that the reasons for closure were appropriate.

Urgent Decisions

31. 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).

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.

32. There were 5 instances where the Chief Executive has undertaken Executive Decisions on behalf of the Cabinet in 2021/2022. These decisions are recorded by Democratic Services and were reported to the Cabinet.

Scrutiny Call-In

33. 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.

One instance of Call In for the decision not to extend the Burford Experimental Weight Limit. The Call in has been considered by the Place Overview on 2 February 2022 on 5 January 2022. The final decision of the Cabinet was made on 15 February 2022.

Modern.Gov, transparency and access

Modern.Gov is the software package used by the Council for creating, tracking and publishing council meeting agendas, 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. Despite best intentions from Committee Services to use Modern.Gov to roll out 'paperless agenda' in 2021/2022, it has proved to be challenging due to a high staff turnover in the service. This is now a project for the 2022/2023 period. Modern.Gov also has capacities, currently being explored, for tracking decisions and to publish the Council's Constitution. It also contains a module for publishing elections information, which was used successfully in May 2021 elections.

34. Modern.Gov also been used successfully in-year for managing the Council's

Forward Plan and for publicising meetings and agendas, 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.

Constitution Review

35. It was determined by this Committee during 2020/21 that a review of the Constitution should take place. The Council 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.
36. It was agreed that this should occur after the May 2021 elections so that the review could be owned and led by the new council. This work was led by a cross-party working group and programmed into the work of this Committee.
37. Topics discussed by the Cross-Party Constitution Review working group at its monthly meetings held between Nov 2021 and April 2022 included the revision of the protocols in Parts 9.2 and 9.6 of the Constitution; the incorporation of the Articles into the main body of the Constitution; the views of the different political groups on what needed to change in the Constitution; the presentation of the Constitution on the Council's website and ensuring that the Constitution complied with all statutory requirements.

38. Members' Allowances

The new Scheme of Members' Allowances approved by Council on 2 November 2021 was implemented with effect from 1 April 2022.

Summary

39. This annual review highlights the progress in maintaining democratic accountability and transparency with members continuing to undertake their

role as community leaders during 2021/2022.

40. Members made an effective transition back to face to face public meetings while allowing members of the public, officers and partners to participate virtually at the meeting. Encouraging and maintaining high standards of conduct will continue to be addressed in 2022/23 with the consideration of the new Member Code of Conduct. It will be important to ensure that members are provided with adequate training on that Code. 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.

ANITA BRADLEY

Monitoring Officer

Contact officer: Simon Harper, Head of Governance, Contact details

