

AUDIT AND GOVERNANCE COMMITTEE – 15 September 2021

Annual Monitoring Officer Report 2020/21

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 2020/21, 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 2020/21 was, successively, Nick Graham, Director of Law & Governance (who left the authority in June 2020), Steve Jorden, the Interim Monitoring Officer pending a new appointment; and Anita Bradley, Director of Law & Governance, who became Monitoring Officer on 4 January 2021.

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 2020/21 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 **14** formal complaints against members during 2020/21 although 11 of these were about the same issue. Taken together, the theme was the tension between members speaking freely in robust political debate – in person and particularly online – and perceptions as to what behaviours ‘cross a line’.
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 following investigation, the consideration was whether the behaviours were found to have breached the Code of Conduct and if so what if any sanction to impose. In each case, the Monitoring Officer also sought the views of the Independent Person.

Complaint/allegation	Outcome
Complaint 1: fellow county councillor complained about a members’ language at the Full Council meeting on 14 July 2021	Informal resolution; apology made.
Complaint 2: member of the public complained about allegedly disparaging remarks made on social media about political opponents viewpoints at another authority	Not upheld, no breach found
Complaints 3-13: 11 complaints from members of the public about a member’s remarks on social media	Breach of Code found. Members Advisory Panel held with recommended actions to

Complaint/allegation	Outcome
endorsing an offensive viewpoint and language	the Monitoring Officer which were followed. Audit & Governance Committee and Full Council informed. Apology given.
Complaint 14: Complaint that councillor made inappropriate remark during a conversation on a local issue, on social media.	Not upheld, no breach found..

20. The outcomes of these complaints and the contexts in which they arose, informed the development of the post-election member induction programme, particularly in emphases about the responsibility to demonstrate good behaviours. The Welcome Event and the Member Code of Conduct sessions both reflected on members being clear about when they are acting in their capacity as councillors; and the importance of keeping public dialogue consistent with the Code.
21. The Monitoring Officer intends, during 2021/22, 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. The potential revision of the Member Code of Conduct itself provides an important context for reviewing the arrangements for dealing with any complaints that arise under the Code. The Committee will be kept involved in this.

Pre-election and induction preparation

22. 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.
23. 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 management 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 2020/21.
24. 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 Group Leaders.

Oxfordshire Monitoring Officers' Group

25. 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 monitoring the operation of the harmonised codes of conduct and governance issues generally.

Democratic process

26. 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, for much of 2020/21. At the earliest opportunity the Council utilised the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 that came into force on 4 April 2020. The Council put in place constitutional arrangements to hold remote meetings, adopting Virtual Meeting Procedure Rules and producing guidance for the public.

27. In practice, the Council's decision making made a smooth transition to the virtual space. Councillors remained able to engage in online meetings, and members of the public were also able to participate in terms of speaking and addressing meetings, as well as viewing them remotely. As such, member-based decision-making continued without the need for an increased use of officer delegation. In all, 12 meetings were either cancelled or postponed in April and May 2020 at the outset of the pandemic, in order to maximise the business of the meetings that did then take place. Thereafter, in total, a full complement of 108 formal meetings were successfully held virtually between April 2020 and March 2021.

28. The Council's Education Appeals Panels were also able 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, exceptions to the Forward Plan process for Cabinet decisions, and instances of call-in.

- 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

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 14 times over the past year (23 in 2019/20, including Appeals & Tribunals Panels). The instances are set out in **Annex 1** to this report. In each case, the Monitoring Officer was satisfied that the reasons for closure were appropriate.

Cabinet – Forward Plan

31. 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, of which there were five (six last year).

Scrutiny Call-In

32. 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. No instances of call-in occurred during 2020/21 (two in 2019/20)

Chief Executive – 'Cabinet Decisions'

33. Under the Council's Constitution, the Chief Executive is given 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 2020/21 this delegation was exercised on two occasions (13 in 2019/20). Both related to exemptions to the requirements of the Contract Procedure Rules and required (and received) a legal (Director of Law & Governance) and financial (Director of Finance) appraisal. The instances are listed in **Annex 3**.

Modern.Gov, transparency and access

34. 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 our website as to the calendar of meetings and the accessibility of meetings papers. During 2020/21, we have piloted the use of an app for members to facilitate remote access to restricted papers securely and we will be reviewing a potential roll out of this during 2021/22. The public also has access to a public-facing app.

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 prepared in readiness for the May 2021 elections..

35. 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

36. It was determined by this Committee during 2020/21 that a review of the Constitution should take place. 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 has been programmed into the work of this Committee for the months ahead and will secure involvement from members individually and via a cross-party working group. 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.

37. As part of the Constitution Review, it will be important that the efficacy of the member-related protocols is also sound and reflects good practice. This includes, for instance, the Protocol on Members' Rights and Responsibilities (Part 9.2 of the Constitution) and the Protocol on Member-Officer Relations (Part 9.6).

Members' Allowances

38. During 2020/21, the Council's Independent Remuneration Panel undertook a planned, full review of the members' allowances scheme. The Panel recommended some changes to allowances, having reviewed the roles of members on Oxfordshire County Council and having interviewed a cross-section of them.
39. Council agreed not to accept the Panel's recommendations at that time, in whole or in part, and agreed to a status quo Scheme of Allowances for 2021/22. This was with the proviso that the newly elected Council after May 2021 be asked to revisit the matter during the 2021/22 Council Year. This matter will be brought back to Full Council later in the year for consideration.

Summary

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

role as community leaders during a period of challenge and constraint in a year particularly affected by the COVID19 pandemic.

41. Members made an effective transition to meeting online with ethical standards maintained during this process. Encouraging and maintaining high standards of conduct will continue to be addressed in 2021/22 with the consideration of a potential new Member Code of Conduct. If Council resolves to adopt a new 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

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Annex 1

Exempt items – May 2020 – May 2021

Meeting	Date	Provision
Education Scrutiny	24 June 2020	2
Joint Shared Services and Personnel Committee	11 August 2020	1,2,3
Pension Fund Committee	4 December 2020	2 Reports para 3
Joint Shared Services and Personnel Committee	16 December 2020	1,2,3
Pension Fund Committee	5 March 2021	2 Reports, para 3
Joint Shared Services and Personnel Committee	25 March 2021	4
Appeals & Tribunals Subcommittee*	Various dates (x8)	1,2,3

* These Sub-Committees hear individual personal appeals

Statutory provisions:

1. Information relating to any individual
2. Information likely to reveal the identity of an individual
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)
4. Information relating to any consultations or negotiations or contemplated consultations or negotiations in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of or office holders under the authority
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings
7. Any action taken, or to be taken in connection with the prevention, investigation or prosecution of crime

Annex 2

General Exceptions to the Forward Plan May 2020 - May 2021

A. Access to Information Procedure Rules Paragraph 16 Special Urgency

Department of Transport Active Travel Emergency Fund - Tranche 2

To delegate authority for approval to officers of the Active Travel Emergency Fund Tranche 2 submission to the Department of Transport - Cabinet, 21 July 2020

Highways Term Maintenance and Major Projects

To seek agreement to the novation of Oxfordshire County Council's highways maintenance contract - Corporate Director - Communities, 16 March 2021.

B. Access to Information Procedure Rules Paragraph 15 General Exception

Objection to West Berkshire Minerals and Waste Local Plan

The Cabinet was asked to endorse the officer recommendation to raise an objection to the R19 West Berks Minerals and Waste Local Plan pre-submission draft - Cabinet, 16 March 2021.

Reprovision of Maltfield House – New Build Children's Home

To seek approval of the proposal to change the design specification of the new build children's home from six to four beds - Cabinet, 20 April 2021.

Developing a Strategic Framework for Oxfordshire County Council Libraries and Heritage Services

To consider approving the development of a clear vision and strategic framework for the planning and delivery of libraries and heritage services to strengthen the contribution they make to wider community outcomes - Cabinet, 20 April 2021.

Annex 3

Chief Executive – Cabinet Decisions (Constitution, Part 7.1)

Request for exemption from tendering under Contract Procedure Rule ("CPR") 20 in respect of the award of a Contract for Reablement Support Workers to support an Oxfordshire Home First New Ways of Working – 28 September 2020.

Request for exemption from tendering under Contract Procedure Rule ("CPR") 20 in respect of the award of a contract for vision screening for 4-5 year olds – 21 January 2021.