

Division(s):

AUDIT AND GOVERNANCE COMMITTEE – 16 September 2020

Annual Monitoring Officer Report 2019/20

Report by Monitoring Officer

RECOMMENDATION

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

The Committee's responsibilities for ethical standards

2. The terms of reference of the Audit & 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.
4. The Monitoring Officer during 2019/20 was Nick Graham, Director of Law & Governance. Nick left the Council in June 2020, with Steve Jordan appointed as Interim Monitoring Officer in succession.

Standards in Oxfordshire – overview of arrangements

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. 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.

7. During 2019/20, Dr Sadie Reynolds continued to assist the Monitoring Officer as an Independent Person for the purposes of reviewing complaints about councillors. To increase resilience, the Monitoring Officer undertook an additional recruitment exercise, following a public advertisement, during 2019/20. At its earliest opportunity, in May 2020, Full Council approved the appointment as Independent Persons of Mr Nicholas Holt-Kentwell and Mr Martyn Hocking.
8. 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 an Independent Person, decides 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 of this Committee
 - 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 currently no right of appeal although a Model Code of Conduct proposed by the Local Government Association may well contain this provision following a recent consultation nationally. The Council has contributed to the national debate on the Model Code and will keep abreast of any developments in 2020/21.
9. 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 and post-election induction

10. Clarity and accountability in the decision making of the Council is an important bedrock for good member governance. Key to this is the diversity of representation and experience of county councillors.
11. In November 2019 Cllr Pete Sudbury was elected for the Wallingford Division at by-election following the resignation of Lynda Atkins. The by-election was successfully concluded by the County Returning Officer and the Deputy Returning Officers at South Oxfordshire District Council.
12. An induction conversation was held between the Monitoring Officer and Cllr Sudbury and support was provided by the Democratic Support Team. There were no other by-elections during this reporting period and so no additional requirement for member induction.

Decision making governance

13. Given the Committee's role in overseeing good member governance, it is also appropriate to update this Committee on the exercise 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

14. 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

15. 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 additional non-key-decision items. There were two items agreed as a matter of special urgency.

Scrutiny Call-In

16. 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 **two such instances** in 2019/20, as follows, with the reason for urgency given:

Expansion of Radley C of E Primary School – any delay would seriously prejudice the Council's interests, in that any delay could mean the decision would be taken away from Oxfordshire County Council.

Supported Bus Services Fund – the waiver allows the County Council to meet a Statement of Intent deadline of 13 March 2020, which if the usual scrutiny process were invoked could not be met and, therefore, would prejudice both the Council's and public interest.

Chief Executive – 'Cabinet Decisions'

17. 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 2019/20 this delegation was exercised on **13 occasions**; all were 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 Monitoring Officer

18. 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 the registration of members' interests. An Election Special Interest Group of key electoral officers, coordinated by the County Council, reports directly to that meeting. The Group was instrumental in 2019/20 in ensuring effective planning for the local, European and General Elections on behalf of their respective Returning Officers.

Modern.Gov, transparency and access

19. Modern.Gov is the software package adopted by the Council (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 successfully used in the November 2019 by-election, both for displaying results and subsequently for publishing updated councillors' web pages.

20. It has 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.

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

21. It is a core duty of this Committee to promote and monitor high standards of conduct by councillors and co-opted members.

22. The Monitoring Officer advice was also issued as regards:

- 'Purdah' (i.e. restricted period) guidance on councillor responsibilities about the use of council publicity and resources during the local elections, by-election, European and General Election of 2019
- Disclosable Pecuniary Interests
- Dispensations for the February budget setting meeting

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

23. 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.

Declaration of interests

24. 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.

25. 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

26. There have been no applications for dispensation.

The Number and Nature of Complaints of Breaches of the Code

27. There were **four** formal complaints against members during 2019/20. These demonstrate the tension between members speaking freely in robust political debate – in person and online – and perceptions of the public and fellow members as to what behaviours ‘cross a line’.
28. In each case, it is was matter of whether any such behaviour could reasonably be said to have gone beyond the context of robust debate and to have breached the Code of Conduct: for example to have become personally insulting rather than a point argued in the moment.
29. In two other cases, the complainant did not wish to pursue the matter, but both again related to comments made in a social media setting. One was in relation to a tweet for which the councillor immediately apologised; another in relation a remark made elsewhere on social media.

Complaint/allegation	Outcome
Complaint 1: Complaint about inappropriate and insulting use of social media.	Upheld, Code breached, apology given.
Complaint 2: Complaint about attitude of the councillor towards a member of the public, with allegations of intimidating behaviours.	Not upheld, Code not breached but councillor chose to apologise as a demonstration of goodwill.
Complaint 3: Complaint about a councillor’s remark regarding attendant members of the public during a speech at a Council meeting.	Not upheld, Code not breached, no action needed.
Complaint 4: Complaint that councillor made inappropriate remark during a conversation on a local issue, on social media.	Not upheld, Code not breached, no action needed.

30. The instances in relation to social media occurred notwithstanding the fact that members of the Council had unanimously passed a resolution in 2018 committing themselves to engaging constructively in social media.
31. During 2020/21, the Council, through this Committee, considered the potential Model Code of Conduct promoted by the Local Government Association. This stemmed from the Committee on Standards in Public Life’s report into local government ethical standards, to which this Committee also contributed in 2017-18.

32. In the light of the above and the context of a greater online occurrence of meetings, it will be appropriate to issue further guidance and refresher briefings on the Code requirements, and best practice, in 2020/21 and regularly thereafter.

Independent Remuneration Panel

33. During 2019-20 further recruitment was undertaken by the Monitoring Officer to the Council's Independent Remuneration Panel. This led to the appointment of Ms Katherine Powley and Mr Martyn Hocking. This is also paved the way for a brief review by the Panel leading to the adoption of a Scheme of Allowances for 2020/21, approved by Full Council in May 2020. It was recommended by the Panel, and approved by Council, that a full review of the Scheme be undertaken during 2020/21. Since then Mrs Bronwen Buckley has also joined the Panel in readiness for this review.

COVID-19 – Governance Implications

34. The outbreak of the COVID pandemic in March 2020 and the national lockdown meant decision making meetings could no longer be held in a physical setting. The Council was able speedily to create a solution to this. Meetings were delivered through MS Teams, with training provided for members and staff. Virtual Meetings Procedure Rules were adopted that were legally/constitutionally compliant and which enabled the public to engage fully with the meetings.

Summary

35. This annual review highlights the progress in maintain democratic accountability and transparency. The commitment to encouraging high standards of conduct will continue in 2020/21 as the Council and its members continue to engage with virtual meetings and the wider social media environment.

STEVE JORDEN
Monitoring Officer

Contact officer: Glenn Watson, Principal Governance Officer, 07776 997946.

Annex 1 Closed sessions – exempt reports

Committee/Cabinet member	Date	Provision (see note)
Pension Fund	7 June 2019	3
Remuneration	3 June 2019	1, 2 & 3
Cabinet Member for Education & Cultural Services	12 June 2019	NA**
Performance Scrutiny	4 July 2019	3
Joint Shared Services and Personnel	27 July 2019	1,2 and 3
Joint Shared Services and Personnel	29 August 2019 2019	1,2 and 3
Pension Fund	6 September 2019	3
Cabinet Member for Environment	12 September 2019	3
Pension Fund	6 December 2019	3
Cabinet Member for Education & Cultural Services	16 January 2019	NA**
Joint Shared Services and Personnel	20 January 2020	1, 2 and 3
Remuneration	30 January 2020	4
Education Scrutiny	5 February 2020	2
Pension Fund	6 March 2020	3
Remuneration (Appointments) Sub-Committee	22 April 2019	1
Pension Fund Committee	7 May 2020	1,2 and 3
Appeals & Tribunals Sub-Committee	Various dates (x 9)*	1, 2 and 3

* These Sub-Committees hear individual personal appeals

** Disclosure of information was forbidden by a government department or a court order (in which case the authority has no choice but to exclude the public).

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 2019-May 2020

Access to Information Procedure Rules Paragraph 16 Special Urgency

North Wessex Downs AONB Management Plan 2019-24 : Adoption

To seek adoption of the North Wessex Downs AONB Management Plan 2019-24.

Access to Information Procedure Rules Paragraph 15 General Exception – Key Items

New Primary School in NE Wantage (Kingsgrove)

To consider a matter in respect of the opening of the new school in NE Wantage.

HIF Marginal Viability(mv) funding agreements Bicester & Wantage

To seek approval for delegated authority for signing the HIFmv agreements to Director of Planning and Place in consultation with the Leader.

Oxfordshire Local Aggregates Assessment 2019

To seek approval of the Oxfordshire Local Aggregates Assessment 2019.

Supported Bus Services Fund

To seek approval of the Statement of Intent for the spending of Oxfordshire's allocation of the Supported Bus Services fund, for submission to the Department for Transport.

Oxfordshire Minerals and Waste Statement of Community Involvement

To seek approval of the revised Oxfordshire Minerals and Waste Statement of Community Involvement.

Additions/Changes of date to the Forward Plan – Non Key items

Burford Weight Limit

To seek approval of a proposed experimental environmental weight limit subject to the approval of enforcement, success criteria and permits of exemption details.

Investment Strategy

Discussion and consideration of the updated Investment Strategy ahead of submission to full Council later in 2019 as part of the financial planning process.

Transition Fund for Open Access Children's Services: Underspend Bidding Round Recommendations

To seek agreement to the allocation of underspent funding to Open Access Children's Services projects.

Joint Housing & Homeslessness Strategy for Vulnerable Young People & Families and Recommissioning of the Young People's Supported Housing Pathway

To seek approval and adoption of the strategy and to seek approval to proceed with a co-commissioning approach to the Young People's Supported Housing Pathway.

Senior Joint Leadership Roles – Oxfordshire County Council and Cherwell District Council

To note the proposal to appoint two senior joint posts so as to facilitate further joint working with OCC and CDC and to ask the Joint Shared Service & Personnel Committee to convene as soon as practicable to proceed with the recruitment and appointment of the most suitable candidate.

Heathrow Airport Expansion Consultation

To seek approval of the draft consultation response and make any amendments to the response as necessary.

Streetworks Permit Scheme

To note the updates for Cabinet Members formal consultation briefing note on terms of the permits scheme.

A40 VISSIM Model License Agreement

To seek approval of the draft license agreement to share transport (VISSIM) model with third party to allow use to proceed Oxfordshire Cotswold Garden Village planning application.

Banbury - A422 Stratford Road and Bretch Hill - Signalled Crossing and Traffic Calming

To seek approval of the proposals.

Ardley: B430 - Proposed Signalled Pedestrian Crossing

To seek approval of the proposals.

Staffing Report – Quarter 2 – July–September 2019

Quarterly staffing report providing details of key people numbers and analysis of main changes since the previous report.

Primary Authority Scheme for Fire & Rescue

To seek to approve the Primary Authority Scheme Partnership with Social Housing provider.

Council Tax Discount Scheme for Care Leavers

To consider the introduction of the policy for OCC and billing authorities.

Digital Infrastructure Strategy & Partnership Memorandum of Understanding

To seek endorsement by Cabinet for Digital Infrastructure Strategy and formation of a Digital Infrastructure partnership between County, City and district Councils by way of a Memorandum of Understanding.

Abingdon, Henley, Oxford and Wallingford: Amendments to Fees for Residents Vehicle and Visitor Permits and On-Street Parking

To seek approval of the proposals.

Workforce Report and Staffing Data – Quarter 4 – January – March 2020

Quarterly staffing report providing details of key people numbers and analysis of main changes since the previous report