

AUDIT AND GOVERNANCE COMMITTEE – 20 September 2023

Annual Monitoring Officer Report 2022-23

Report by Anita Bradley, 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 2022-23 (1 April 2022 to 31 March 2023), 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 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.
 - To advise the Council as to the adoption or revision of 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.
5. The Monitoring Officer during 2022-23 was Anita Bradley, Director of Law and 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. Oxfordshire's revised Member Code of Conduct was approved at Full Council in April 2022 adopted from 1 May 2022, and 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, as updated in January and May 2021.
8. Oxfordshire Monitoring Officers working with the Oxfordshire Association of Local Councils produced an updated Councillors' Code of Conduct which was considered by each of the Oxfordshire Authorities for approval. 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.
9. Mr Hocking and Mr Holt-Kentwell are the Council's Independent Persons who support the Monitoring Officer and members in the consideration of Code of Conduct complaints. Their appointment was approved at Full Council in July 2020 for two years, renewable once. Their second term in role will therefore end in June 2024, and the Council will commence its process of recruiting for a new term of Independent Persons before the end of 2023.
10. A summary of the Code of Conduct complaints received, considered and determined during 2022-23 and their outcome, is reported at paragraph 21 below.
11. The Monitoring Officer's role is to provide advice to Members even if there is no formal action taken. The Monitoring Officer may consider that there are "learning points" which should be shared with the Subject Councillor or the Audit and Governance Committee. A large number of the complaints considered relate to activity on social media and therefore this point has been addressed in more detail in the Code of Conduct training being given.
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. For quality assurance purposes, the Monitoring Officer will review all of the Council's guidance and processes in respect of operation of the Code of Conduct and maintaining the register of members' interests in 2023-24 as part of the review referred to in paragraph 18 of this report.

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 the Audit and Governance Committee and each and every member to promote and maintain high standards of conduct by councillors and co-opted members.
14. Advice from the Monitoring Officer was 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 pre-election periods for the May 2022 and May 2023 District Council elections.

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 24 formal complaints against members during 2022-23, three of which were about the same social media issue, and a further five related to events that took place during a Cabinet meeting. Of the complaints received the majority related to either members' use of social media, and their interactions with members of the public, or matters relating to Council led schemes, that have attracted high levels of public interest with polarised views.
19. In each conduct case, it is necessary for the Monitoring Officer to assess 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'. 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 Subject Member was acting in an official

capacity?

- **Timescale:** The Monitoring Officer will take into account when the events subject to the complaint took place and will not normally investigate or pursue other action 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 Monitoring Officer will not normally refer a matter 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:** Has the Monitoring Officer received more than one complaint about a single event?
20. As part of the assessment the Monitoring Officer also assesses whether if the conduct complained of were proven could it amount to a breach of the code of conduct.
21. On each occasion, when the Monitoring Officer undertook the initial assessment of a Code of Conduct complaint against the criteria set out above she also discussed with and sought the views of an Independent Person before reaching her decision as to what action was required.
22. The Monitoring Officer has personally reviewed every complaint received and, after consultation with the Independent Person has taken a decision as to 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
23. Of those cases received in 2022-23 that have been determined, details and outcomes are detailed as follows:

	Complaint or allegation	Outcome
1	Complaint about post on social media.	Written apology, no formal action.
2	Complaint about Conduct of Councillor at formal meeting.	No Action
3	Complaint about the lack of representation by Councillors	No Action

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4-6	Complaint about post on social media.	No Action
7	Complaint about post on social media.	No Action
8	Complaint about Councillor comments at formal meeting and in the press.	No action
9	Complaint about posts on social media.	No Action
10	Complaint about Councillor's response in local public meeting.	No Action
11	Complaint about Councillor's comments to the press.	No Action
12	Complaint about Councillor's comments to the press.	No Action
13-16	Complaints about matters relating to Cabinet Meeting	No Action
17	Complaint about lack of communication from Councillor.	No Action
18	Complaint about matters relating to Cabinet Meeting.	No Action
19	Complaint about a published video and posts on social media.	No Action
20	Complaint about lack of communication from Councillor.	No Action
21	Complaint about accuracy of comments made a formal meeting.	No Action
22	Complaint about posts on social media.	Deletion of Tweet, apology via Twitter, and written apology to complainant. No formal action.
23	Complaint about posts on social media.	No Action
24	Complaint about the use of Council Premises	No action

24. The Monitoring Officer intends, during 2023-24, to further 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 revised Member Code of Conduct adopted in May 2022 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 and have the opportunity to consider it at a future meeting.

Member training and awareness raising sessions

25. 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.
26. A range of other training and awareness raising sessions were held during 2022-23 including Planning, Pensions, climate change, infrastructure development and other topical issues.

Oxfordshire Monitoring Officers' Group

27. 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

28. Clarity and accountability in the decision making of the Council is an important bedrock for good governance. Following lessons learned from the Covid-19 Pandemic 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.
29. In total, 87 formal public meetings were held and facilitated by the committee services team of the Council between 1 April 2022 and 31 March 2023.
30. There is a high level of democratic engagement at Council, Cabinet and Committee meetings that are open to the public. Members of the public asked 20 public questions, presented 8 petitions and addressed members 305 times at formal meetings during 2022-23.
31. The Council's Education Appeals Panels continued to meet remotely with parents generally welcoming the opportunity to join meetings virtually.

Decision-making governance

32. 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

33. 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 15 times over the past year. In each case, the Monitoring Officer was satisfied that the reasons for closure were appropriate.

Urgent decisions

34. 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).
35. 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.
36. There were 11 instances where the Chief Executive has undertaken Executive Decisions on behalf of the Cabinet in 2022-23. These decisions are recorded by Democratic Services and were reported to the Cabinet.

Scrutiny call-in

37. No decisions of the Cabinet or made by a Cabinet Member were called in during 2022-23.

Transparency and access

38. 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.
39. 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. A timeframe will be developed for introducing these changes once the Democratic Services Manager. has undertaken the planned recruitment to the Team.

Constitution Review

40. 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.
41. Following recommendations from a cross-party working group, Council agreed in October 2022 to revision of the protocols in Parts 9.2 and 9.6 of the Constitution and the incorporation of the Articles into the main body of the Constitution. The presentation of the Constitution has been improved on the Council website to make it easier to navigate for members, officers and the wider public.
42. Further work is required to ensure that the Constitution enables the needs of a modern council. It is planned to reconvene the cross-party working group with a view to making recommendations to the Audit and Governance Committee on potential improvements. The Future Council Governance Group is looking at the potential for changing the Council's governance arrangements. If a change is recommended and approved by Council, then a wholesale re-write of the Constitution will be required.

Members' Allowances

43. The new Scheme of Members' Allowances approved by Council on 2 November 2021 was implemented with effect from 1 April 2022. At its meeting on 28 March 2023 following a recommendation from the Independent Remuneration Panel Council agreed an increase in allowances from 1 April 2022 in line with the percentage increase in employee costs for Oxfordshire County Council arising from the 2022-23 national pay award.

Summary

44. This annual review highlights the progress in maintaining democratic accountability and transparency with members continuing to undertake their role as community leaders during 2022-23.
45. Encouraging and maintaining high standards of conduct will continue to be addressed in 2023-24 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

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

Financial implications

47. The activities highlighted in this report relate to business as usual and funding is provided as part of the Council budget for Governance.

Comments checked by – Lorna Baxter, Director for Finance

Legal implications

48. 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 – Anita Bradley, Director of Law & Governance and Monitoring Officer

Staff implications

49. Governance is part of a wider Law and Governance Transformation Programme which will provide more capacity in Democratic Services, Corporate Governance and Scrutiny.

Equality and inclusion implications

50. No direct implications identified

Sustainability implications

51. No direct implications identified

Risk management

52. No direct implications identified

Consultation

53. No direct implications identified

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