

## AUDIT AND GOVERNANCE COMMITTEE – 11 September 2019

### Annual Monitoring Officer Report 2018/19

Report by Director of Law & Governance and 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.

#### Standards in Oxfordshire – overview of arrangements

4. 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 also 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.
5. While each authority has adopted slightly different approaches to **handling complaints** about councillor conduct, there is a common theme of proportionality in these arrangements, as envisaged by the Localism Act. The Council has appointed an Independent Person to assist the Monitoring Officer in reviewing complaints about councillors and in 2019/20 is actively recruiting more.
6. 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 the Independent Person, decide 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
- 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 no right of appeal

7. The Members' Advisory Panel will be formed of members of this Committee.

8. 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**

9. 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.

10. The full County Council election was held on 4 May 2017. Since that time, during the Autumn of 2018, three by-elections were held following the resignation of three councillors. The by-election polls and the counts were successfully conducted in accordance with electoral law. The by-elections, for Oxford Iffley Fields and St Marys, and for Grove & Wantage and Wheatley divisions, were supported by the Council's Democratic Support Team on behalf of the Returning Officer, and by the Deputy Returning Officers at the Oxford City and South Oxfordshire/Vale of White Horse councils.

11. Following the by-elections, and to support councillors in their democratic roles, a specific induction session was held for the three newly elected members of the Council led by the Monitoring Officer and Democratic Services colleagues, covering essential governance such as the members' code of conduct, the planning code, the Constitution and members' rights to information.
12. At the Annual Meeting in May 2018, a Leader and a Chairman were duly appointed as were council committees and their memberships, in accordance with local government legislation and the Council's Constitution.

### ***Decision making governance***

13. Given the Committee's role in overseeing good member governance, it is also appropriate to update this Committee from time to time on the exercise of aspects 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 was **one such instance** in 2018/19, as follows, with the reason for urgency given:

**Oxford: Amendments to On-Street Pay and Display Parking Charges and Times of Operation** – any delay would seriously prejudice the Council's interests, in that the 2 elements of this proposal i.e. the charges (previously agreed by Cabinet) and hours of operation must come into force simultaneously on 1 April 2019 to avoid possible challenge.

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 2018/19 this delegation was exercised on **16 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 together to discuss issues of common concern. This comparison of experiences has been particularly useful in monitoring the operation of the harmonised codes of conduct and the registration of members' interests. It also proved useful through the development of Special Interest Groups – which involve the sharing of good practice around a range of legal, democratic and electoral issues which are then reported to the overall Monitoring Officer group.

Modern.Gov, transparency and access

19. Modern.Gov is the software package adopted by the Council (and 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 May 2017 county council elections and in the three subsequent by-elections, both for displaying results and subsequently publishing 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. This formed a core part of the councillor induction programme (in terms of code of conduct training). But advice was also issued as regards:

- ‘Purdah’ guidance on councillor responsibilities with regard to the use of council publicity and resources during the 2018 by-elections
- Disclosable Pecuniary Interests
- Dispensations with regard to 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 **two** complaints against members during 2018-19. In both of these complaints, the complainants’ dissatisfaction in part stemmed, I believe, from a particular expectation of councillor conduct. Both demonstrated the importance of the space within which councillors work on an individual and community level. In both of these cases, it was not found that the Code of Conduct had been breached.

Complaint/allegation	Outcome
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Alleged inaction in relation to a constituent's concerns	No breach found. Factual basis not agreed and 'councillor performance' in a role is not in itself a Code of Conduct matter.
Alleged wilful data breach by a councillor (i.e. notifying fellow community councillors of the fact a person had made a Freedom of Information request)	No breach found. Misunderstanding as to the 'on the record' nature of the original request.

## **Governance Review**

28. Following a decision of both Council and Cabinet, a Governance Review Task Group of this Committee has been formed to review potential future forms of local governance, including a potential return to a committee system. This Group has been briefed on the legal basis for any options and has undertaken a series of fact-finding and exploratory visits to other local authorities which have operated differing decision-making systems. The visits were preceded by a whole council survey seeking councillor views on the current and potential decision-making arrangements.
29. During Autumn 2018 a whole council workshop took place which informed the Task Group's review. The Group's report was then presented to Cabinet in January 2019. Cabinet did not adopt the recommendations of the Group as it felt that it might be better to await the outcome of the Council's wider transformation work. Cabinet asked the Group to work up a number of the proposals but the Group declined to do this, pending further clarity as to the transformation work.

## **Independent Remuneration Panel**

30. In January 2019, the Council's Independent Remuneration Panel met at the request of the Council to consider making recommendations several allowances matters including allowances for the chairman of the newly created Horton Joint Health Overview and Scrutiny Committee; the chairmanship of the Thames Valley Police and Crime Panel; and whether to continue with an index for potential annual increases in line with the local government pay award. Recommendations were duly made and considered by the Council on 2 April 2019 and adopted. In addition, the Panel had recommended an increased size of panel (a maximum of seven); and that the Panel meet annually and that it should start with a review of allowances in the Autumn of 2019. These recommendations were also adopted and further recruitment to the Panel is under way.

## **Partnership between Oxfordshire County Council and Cherwell District Council**

31. During 2018/19, the County Council entered into a formal partnership with Cherwell District Council. This was effected through both councils' adoption of a 'Section 113 Agreement' to make the staff of one available to the other. The Monitoring Officer worked with this Committee to develop and implement the suite of governance policies to underpin joint working, including the terms of reference of the relevant councillor decision making bodies; and the conflict of interests regime that was also needed.
32. The partnership has progressed effectively and also involved the joint working of the democratic services teams of both authorities in the planning and deliver of the District Council's election, in support of the Returning Officer. It has also involved additional partnership work, agreed by the Monitoring Officer, for information management.
33. At its meeting on 23 April 2019, Cabinet reviewed the Partnership, considering and endorsing a [report from the Partnership Working Group](#) and committing to the next phase of partnership working.

### **Summary**

34. This annual review highlights the progress that has been made in promoting and maintaining high standards of conduct and public accountability. The commitment to encouraging high standards continues and will form a key part of the future decision-making arrangements, and in the partnership between Cherwell District Council and this Council agreed in 2018 and which is also proceeding effectively.

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## Closed sessions – exempt reports

<b>Committee/Cabinet member</b>	<b>Date</b>	<b>Provision (see note)</b>
Pension Fund	8 June 2018	3
Remuneration	14 June 2018	1
Remuneration	18 June 2018	1
Remuneration	22 June 2018	1
Education Scrutiny	27 June 2018	3
Local Pension Board	13 July 2018	3
Remuneration	17 July 2018	1
Pension Fund	14 September 2018	3
Cabinet	16 October 2018	3
Local Pension Board	26 October 2018	3
Remuneration	1 November 2018	2 and 4
Cabinet Member for education & Cultural Services	14 November 2018	NA**
Pension Fund	7 December 2018	3
Cabinet Member for education & Cultural Services	16 January 2019	NA**
Local Pension Board	18 January 2019	4
Remuneration	30 January 2019	
Cabinet	26 February 2018	3
Pension Fund	8 March 2018	3
Cabinet Member for education & Cultural Services	13 March 2019	NA**
Remuneration	4 April 2019	1
Local Pension Board	26 April 2019	3
Audit & Governance	8 May 2019	3
Cabinet	14 May 2019	
Appeals & Tribunals Sub-Committee	Various dates (x 12)*	1, 2 and 3
Pension Benefits Sub-Committee	Various dates (x 1)*	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

## **General Exceptions to the Forward Plan May 2018-May 2019**

### ***Access to Information Procedure Rules Paragraph 16 Special Urgency***

#### **Consultation to Close Northfield School**

To seek approval to initiate consultation to close Northfield School on 13 June 2018.

#### **Tank Farm, Chipping Norton – Development Site**

To seek approval to negotiate the purchase of Pearman's land, being 13.32 ha (32.91 acres) adjoining Tank Farm.

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

#### **Corporate Plan 2018/2021**

To recommend the Corporate Plan 2018-2021 to Council for agreement and adoption.

#### **Home to School Transport Policy**

- (a) To consider the referral back of a call in by Performance Scrutiny Committee of a decision by Cabinet taken on 19 June 2018.
- (b) To consider the outcome of a motion to full Council on 10 July 2018

#### **Joint Working Arrangements between Oxfordshire County Council and Cherwell District Council**

To agree to the principle of joint working between Oxfordshire County Council and Cherwell District Council and to agree initial steps.

#### **Cogges Manor Farm**

To seek approval of future options for Cogges Manor Farm.

#### **Updated Financial and Resource Contribution Towards The Swan Free School Project in Oxford**

To agree to vary terms originally agreed in February 2017 to meet the new project delivery programme.

#### **Director of Public Health Annual Report XI**

To note the independent report and have due regard for it. To seek approval of the report for recommendation to Full Council, for the Council to meet its statutory duty to publish an annual report.

#### **Corporate Plan 2019-22**

To recommend the draft Corporate Plan to Council for agreement.

### **OVO Ladies Cycling Tour**

To seek approval to Oxfordshire being a host venue for the OVO Energy Women's cycle tour in 2019, 2020 and 2021.

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

### **Transition Fund for Open Access Children's Services – May 2018**

To seek a decision on grant funding.

### **Consultation to Close Northfield School**

To seek approval to initiate consultation to close Northfield School on 13 June 2018.

### **Exemption from Procurement– Sapling Recovery Based Supported Accommodation Services in Oxfordshire**

To seek approval for an exemption from procurement for a contract for Sapling Recovery Based Supported Accommodation Services in Oxfordshire.

### **Business Case to Support Significant Capital Investment in the Council's Assets**

To approve the inclusion of significant investment in the Council's assets as part of the proposed Capital Programme to 2029, the funding for which will be included in the proposed Budget for 2019/20 and Medium Term Financial Plan to 2022/23 which will be considered by Cabinet in January 2019.

### **Exemption from Contract Procedure Rules – VCS Infrastructure**

To seek approval for an exemption from contract procedure rules.

### **Oxford: Queen Street – Taxi Access**

To seek approval of the proposals.

### **Oxford: Barracks Lane – Revised Proposals**

To seek approval of the proposals.

### **Oxford: Pay & Display and Park & Ride Fee Changes**

To seek approval of the proposals.

### **Affinity Water Consultation Relating to Proposed Reservoir in Oxfordshire**

To consider for approval Oxfordshire County Council's response to Affinity Water.

### **Improvements to George Street/Hythe Bridge Street/Worcester Street Junction, Oxford City Centre**

To seek approval of the scheme for delivery including the necessary Traffic Regulation Order changes.