

Division(s):

## **AUDIT & GOVERNANCE COMMITTEE – 3 JULY 2013**

### **ANNUAL MONITORING OFFICER REPORT**

Report by the Monitoring Officer

#### **Introduction**

1. The Audit & Governance Committee has taken over certain responsibilities from the Council's former Standards Committee with regard to the governance and standards of conduct for elected and co-opted members. Consequently, the Monitoring Officer will report annually to this Committee on actions and issues in that regard that have occurred in the previous year. This report therefore summarises certain activities for the year 2012/13 and uses, as a guide, the terms of reference that crossed over from the former Standards Committee to this.

#### **The Committee, its responsibilities and changes to the standards regime**

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. These roles remain following significant changes to the standards regime for elected and co-opted members as a result of the Localism Act 2011. Several key changes were:
  - The abolition of the watchdog body Standards for England
  - The abolition of statutory standards committees
  - The ability for councils to adopt their own codes of conduct and their own procedures for investigating complaints about councillor conduct
  - Introduction of the concept of 'independent persons' to assist Monitoring Officers in the consideration of complaints and also to be a resource for members who may be the subject of complaints

- Amendments to the requirements for registering interests, such that only disclosable pecuniary interests *must* be required – with the introduction of a criminal offence of failure to register such an interest
  - Cessation of the requirement to register gifts and hospitality
  - Amendments to the rules on bias and predetermination to relax the former regime and enable members to engage more fully in issues provided they evidentially retain an ‘open mind’
4. The Localism Act did however restate the duty to “promote and maintain high standards of conduct by members and co-opted members of the authority”. This has therefore remained a core element of this Committee’s terms of reference.
5. The effect of these changes and restatements is that while elected and co-opted members operate under a less bureaucratic standards regime, there is a clear expectation that high standards of conduct must continue to be promoted and maintained.

### **Standards in Oxfordshire – overview of arrangements**

6. The county, district and city councils in Oxfordshire worked closely together in the formation of **revised Codes of Conduct** and were able to agree a harmonised Code that has now been adopted by each authority. 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 has also been held out to parish and town councils as a model to follow.
7. 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 also recruited two independent persons – Mrs Ann Griffiths and Dr Nina Alpey to support these arrangements. In brief, the process adopted by Oxfordshire County Council is as follows:
- Each complaint is considered by the Monitoring Officer who, after consultation with the Independent Persons, 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
8. The Members' Advisory Panel will be formed of members of this Committee.
9. In addition to these measures, the Council has also introduced revised Register of Interests arrangements, based on the requirements of the Act and subsequent government guidance and regulations. All councillors complied with this both before (under the previous Council) and after the May 2013 election.
10. The Monitoring Officer also introduced guidance to councillors and co-opted members, effectively offering a commentary on the guidance produced by the Department of Communities and Local Government. This guidance has been circulated to members and included on the members' pages of the intranet.

### **Democratic process**

11. An important bedrock for good member governance is clarity and accountability in the decision making of the Council. Consequently, it is 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

12. 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

13. 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.

### Scrutiny Call-In

14. 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 no such instances in 2012/13.

### Chief Executive Decisions

15. 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 2012/13 this delegation was exercised on 5 occasions; each of these was in respect of exemptions to the requirements of the Contract Procedure Rules and required (and received) a legal (County Solicitor) and financial (Chief Finance Officer) appraisal. On all occasions these were formally reported to the next available Cabinet meeting.

### The Monitoring Officer

16. Monitoring Officers from Oxfordshire's county and district councils have also continued to meet regularly to discuss issues of common concern, and this has been particularly useful in implementing the changes to the standards regime, the development of harmonised codes of conduct and the implementation of revised process for 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

17. Modern.Gov is the software package adopted by the Council (and 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 piloted at a by-election and fully and successfully used in the May 2013 county council election.
18. The system also manages the Council's Forward Plan and e-petitions. Councillors' web pages are also updated using information from the system, including responsibilities (such as Chairman or Cabinet Member), 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.
19. In 2009, following the receipt of grant funding, the council produced and published (online) several short films for members of the public specifically to raise awareness about the role of councillors, how to address meetings and the importance of making complaints and freedom of information requests. DVDs of these films were also made with the same funds and copies are available to County Councillors and community groups as a means of increasing awareness and access to the council. The DVDs are subtitled in several community languages to maximise their impact.

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

20. As mentioned, it is a core duty of this Committee to promote and monitor high standards of conduct by councillors and co-opted members. During 2012-13 the Monitoring Officer held several 'code of conduct' briefing sessions for all members and co-opted members to explain and reinforce the changes made to the regime under the Localism Act.
21. This has now been reinforced by the inclusion of this training – and also training in the Planning Code of Practice – as part of the Council's Induction Programme following the May 2013 elections. Aspects of good governance by councillors and co-opted members will continue to feature as part of other strands of the induction programme, including principles of financial management and personal decision making. This will include Finance briefings generally and liaison with officers dealing with Councillor Community Budgets which, together with the locality meeting structure, will enable members to handle such local decision making accountably. Councillor development needs and consequent plans for further development are all considered by a dedicated cross-party Councillor Development Group: the views of this Group have been instrumental in the establishing principles and content for member development, including the post-election induction events.
22. During 2012/13 the Council drafted and circulated a good practice ***Guide to Members' Allowances*** to enable members better to understand their rights and responsibilities under the members' allowances scheme. Given the high

public profile of elected member remuneration, this additional safeguard gives further detail on what can/cannot be claimed for and demonstrates the rigour of the audit process. The **Guide** has now been reproduced as an essential element of the **Welcome Pack** for councillors issued to all councillors following the May 2013 elections.

23. In addition to the Welcome Pack for councillors, a **Guide for Candidates** was issued to all candidates standing in the 2013 elections. This contained a key section on the code of conduct and the principles of public life. This approach serves to highlight, at the start of a council term, the intention to keep standards of conduct high. The **Councillors' Information** newsletter has been used within the past year to highlight the changes to the standards regime and will also be used throughout the forthcoming year to reinforce messages about good standards of conduct.

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

24. 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. This will be a focus on future reports.
25. For now, as the code and the complaints procedure are relatively new, it will be important to see how the arrangements work in practice and to reflect on the experience of members and complainants, particularly under a newly elected Council.
26. Periodically the Monitoring Officer will remind members of the need to reconsider their Register of Interests entries in case they are in need of review.
27. 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 will 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.
28. Similarly it is useful for the Committee to be kept informed, annually, of the numbers of alleged breaches of the code of conduct.

**Declarations of Interest**

29. 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

30. There have been no applications for dispensation.

### The Number and Nature of Complaints of Breaches of the Code

31. There have been three complaints against members during 2012-13. In only one case was an investigation deemed appropriate and the outcome was to raise awareness of the importance of registering and declaring interests. In the other two cases, one was resolved informally without any further investigation and the other was found not to constitute a valid complaint.

### **Summary**

32. This annual review highlights the progress that has been made in implementing the code of conduct for members and in promoting and maintaining high standards of conduct and public accountability.

### **RECOMMENDATION**

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

#### **P G CLARK**

Monitoring Officer & County Solicitor

Background Papers: Nil

Contact Officer: P G Clark Tel: (01865) 323907