

REPORT TO COUNCIL

## Monitoring Officer's Annual Report 2016-17

### Role of The Monitoring Officer

The law requires the County Council to designate one of its senior officers as the Monitoring Officer. I have been in this post since 1 April 2014.

As the Monitoring Officer I maintain an up-to-date version of the Constitution and ensure that it is widely available for consultation by Councillors, Officers and the public.

One of my main duties as the Monitoring Officer is to ensure that the County Council acts and operates within the law. Although I am not a solicitor myself, I have access to qualified lawyers in Legal Services Lincolnshire. I advise on whether decisions of the Executive are in accordance with the Budget and Policy Framework. I have to report to the full Council or to the Executive if I consider that any proposal, decision or omission would give rise to unlawfulness. Such a report would have the effect of stopping the proposal or decision being implemented until the report has been considered.

I report to full Council where the Local Government Ombudsman issues a Public Report in respect of maladministration or a failure to provide services or a failure in any services provided, under section 31 of the Local Government Act 1974.

I also help promote and maintain high standards of conduct by Council members, officers, partners and contractors. When required I process complaints about alleged breaches of the code of conduct in accordance with the local arrangements and work with the Audit Committee to deal with breaches and to achieve high standards.

The standards regime also requires that councillors register their disclosable pecuniary interests. I need to ensure that the register is being maintained and consider applications in relating to the granting of dispensations.

#### Proper Officer functions

I have a number of duties that do not necessarily result from the statutory functions of the Monitoring Officer but for which the person in that role is best placed to be the proper officer.

I ensure that Executive decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.

I am the Senior Responsible Officer in respect of the Regulation of Investigatory Powers Act. I have to report on Covert Surveillance to the Council.

I am also the Responsible Officer for the Council's Whistle Blowing Policy (Confidential Reporting Code). I ensure that the Audit Committee receives an Annual Report from the Head of Corporate Audit.

Since February 2017 I have been the Senior Information Risk Owner (SIRO), with overall accountability and responsibility for information risk within the Council and shared risks with delivery partners and third party suppliers. I lead and foster a culture that values, protects and uses information for the public good.

# REPORT FOR 2016-17

## Statutory Monitoring Officer Reports

I am pleased to report that there were no occasions where I had reason to believe that there was a likelihood that the Council was about to take a decision that would be unlawful or give rise to maladministration. Consequently, I did not have to issue any report to the council under Section 5(2) of the Local Government and Housing Act (1989).

## Local Government Ombudsman's findings of maladministration

In 2016-17 there were 50 referrals to the Local Government Ombudsman. Of these:

- 17 were considered by the LGO to be premature, not relevant to LCC or out of the Ombudsman's jurisdiction;
- 15 no fault was found by the LGO
- 8 are ongoing
- 8 cases of maladministration were found
- 2 needed no further action (NFA);

There were also 7 decisions from the LGO in 2015-16 that had been referred in 2014-15:

- 4 cases of maladministration were found
- 3 no fault was found by the LGO

Of the cases of maladministration, I am pleased to report that none resulted in a Public Report under section 31.

Please see on the next page brief details of the decisions of maladministration published by the Ombudsman in 2016/17.

The Ombudsman publishes all of its decision notices on its website in anonymised form whether or not a finding is made against the Council. Please note that 1 – 4, highlighted in yellow are matters that were carried forward from 2015/16 and the final decision was issued in 2016/17.

## **Senior Information Risk Owner (SIRO)**

In 2016-17 there were 146 security incidents recorded and investigated by the Council. This included actual and suspected incidents, near misses, security weaknesses, and incidents where the root cause was the responsibility of a third party. Of these 92 were identified as actual incidents (some form of impact) involving Council staff and/or systems.

While it is not a mandatory requirement that the Council report security incidents involving personal data to the Information Commissioners Officer (ICO) the Council adopt a position whereby each incident is considered for reporting taking into account the volume and sensitivity of any personal data involved and any significant detriment to individuals concerned. Of the 92 incidents 3 were subject to onward reporting to the ICO and on each occasion the ICO deemed that no formal enforcement action would be taken against the Council.

**PUBLISHED FINDINGS OF MALADMINISTRATION BY THE LOCAL GOVERNMENT OMBUDSMAN**

- 1) There has been fault by the Council in incorrectly marking out the site boundary for a development near Mr X's home, but this has not caused any significant injustice.
- 2) The Ombudsmen have found fault on the part of a Trust in regard to the way a person was placed into care from a hospital. In addition, the Ombudsmen found fault in the time it took the Council to complete a care assessment. As a consequence the person had to pay unnecessary care home fees. The Trust and Council have agreed to make payments to reimburse these fees to put things right.
- 3) The Council was at fault for not providing the special educational provision for Y exactly as written in his Statement, from September 2015 to February 2016. As the Council did not amend his Statement until February 2016 Mrs X's right of appeal to the Special Educational Needs Tribunal was delayed. The Council has agreed to learn from this fault and agreed to pay Mrs X £300 for the loss of opportunity caused by that delay to her right of appeal.
- 4) The Council did not invite Ms X to her son's annual review while he was living in residential care and this amounts to fault. There is no fault in relation to her concerns about the Council's oversight of his care, its investigation of an incident there or its handling of her complaint.
- 5) There was delay in arranging overnight respite care for the complainant's daughter following the transition from children's to adult services. The Council failed to make any provision for around a year. The Council has offered a suitable payment to recognise the loss of support. It has agreed to apologise to Mrs X and review procedures. This is a satisfactory remedy.
- 6) The domiciliary care Mrs A received was inadequate. Therefore, the Council did not fulfil its duty to meet her care and support needs, which is fault. The Council has apologised and agreed to a financial remedy of £1500, paid by the care provider. The Council has also agreed to take further measures to monitor and improve the service.
- 7) The Ombudsman found fault on Mrs D's complaint that the Council failed to follow timescales for assessing and issuing her son with an Education Health and Care Plan. Timescales were not followed. The Council provided evidence of keeping Mrs D informed throughout the process. It failed to ensure her son received suitable education while out of school for 4 months. The Council's offer to apologise, review procedures, pay £200 for the distress caused, and £750 for E's lost educational provision for 4 months, remedies the injustice caused.
- 8) Mr C complained about the way the Council, two NHS Trusts and Barchester Homes communicated with his family regarding top-up fees for his late father Mr B's nursing home placement. The Ombudsmen have found no fault in the actions of Barchester Homes and United Lincolnshire Hospitals NHS Trust. The Council and Lincolnshire Community Health Services NHS Trust have acted with fault causing Mr B and his family an injustice. The Council agreed to apologise to Mr C and pay him £100 in recognition of his distress and the avoidable time and trouble in resolving the top-up dispute, settle 50% of the outstanding top-up fees invoice and Barchester is asking the family to pay and devise and implement an action plan to ensure similar problems do not recur, ensuring in particular that relevant departments and staff are aware of and complying with the Care Act and related regulations and guidance.
- 9) Mr X did not ask the Council to provide a Residence Order Allowance until 2014 after deciding not to pursue this in 2010. There is no evidence that Mr X asked the Council to provide a large vehicle before he complained in 2014. The Council should not have refused to consider Mr X's complaint at stage 3 of the complaints procedure. This refusal amounts to fault and the Council will apologise for this.
- 10) There is no fault in the Council's decision not to carry out repairs to the road where Mr X lives. There is fault by the Council for the delays in clearing the gully. The Council have already apologised for the delay which is a suitable remedy for any injustice caused.
- 11) There is fault in the confusion caused by the Council to Ms A in regards to the discussions around private fostering and kinship fostering they became confused. The Council agrees to make a payment to Ms A of £300 now in recognition of the anxiety she has already suffered because of its actions. It also agrees to assess Ms A under Regulation 24. If the assessment concludes that the Council is liable to make payments to Ms A, it agrees to backdate those payments to the date the foster arrangement began subject to the normal deductions in respect of child benefit and other applicable benefits.
- 12) Mr and Mrs X complain about changes to the schedule of the school bus and the impact on their children's journey times to and from school. There was fault because the Council gave them misleading information on when it carried out a risk assessment of the route. The Council agreed to remedy the injustice to them through an apology.

## Standards

### Councillors' Code of Conduct

In 2016-17 I have dealt with a number of informal and formal complaints that councillors had allegedly breached the Code of Conduct. In most cases I found that the complaint did not fall within the Code of Conduct scheme. The number of complaints of perceived harassment and poor interpersonal relationships between councillors, which are matters for relevant Group Leaders to resolve, has diminished. One could speculate that this may be the result of adding the criterion of "Respect" to the Council's Code of Conduct. The Chief Whip, Cllr Jackie Brockway, sought to resolve more matters informally.

There have been no formal hearings under the Councillors' Code of Conduct scheme.

The Council appoints Independent persons to assist it in determining any outcomes of an investigation. The Independent Persons are Alan Pickering and Chris Riley. I have consulted them informally on a number of occasions but I am pleased to report that they have not been required to act in their formal capacity at any hearing.

### Register of Councillors' disclosable pecuniary interests

All Councillors had made entries on their register of disclosable pecuniary interests. A number of councillors amended their entries during the year as their circumstances changed.

### Register of Officers' Interests

Managers continue to ensure that officers are aware of their obligations in respect of the Register of Officers' Interests. The register is maintained by the Democratic Services team and is regularly reviewed.

## Regulation of Investigatory Powers Act (RIPA)

Statistics for 2016-17

Trading Standards were the only department to use covert surveillance during 2016-17. In total 8 operations were approved:

- 1 Directed Surveillance application covering 5 operations
- 3 Covert Human Intelligence Sources (CHIS) operations.

The Council was inspected by the Officer of the Surveillance Commissioner in January 2015. The resulting recommendations were accepted on behalf of the Council and an action plan to address them was prepared.

A new legal officer has been appointed to maintain a central record of surveillance operations.

## Whistleblowing

The administration of the Confidential Reporting Policy is undertaken by Internal Audit. The last report was submitted to the Audit Committee in January 2016 covering whistleblowing activity in the year 2014/15.

### MONITORING OFFICER *Richard Wills*

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**ACTIONS ON OSC  
RECOMMENDATIONS  
(RIPA)**

- i A Central Record matrix in two parts has been completed. One to reflect *directed surveillance*; and the other *CHIS*.
- ii The existing *CHIS* forms have been corrected and links to the Home Office forms have been added to the policy so the correct versions are now available and in use.
- iii The *SRO* and *RIPA Co-ordination Officer* are exercising more robust oversight on all authorisations and the authorisation process and frequent meetings are to be undertaken/planned. I have seen greater oversight from Legal Services over the past 12 months, this includes a review of the authorisations submitted, regular requests for documentation and reminders when reviews or renewals are due.
- iv There are plans to utilise Lincs to Learn to improve RIPA awareness throughout the Council.
- v The number of authorising officers has been reduced and training was undertaken 18 months ago.
- vi A controller, handler and record keeper (who may be either controller or handler) has been appointed for each authorisation to manage each *CHIS* and ensure that risk assessments are undertaken in each such case. This is now done routinely for all *CHIS* applications.
- vii Training is ongoing within Trading Standards and an update for all staff is planned when amendments to legislation regarding comms data is introduced. An update session is planned for all staff at the next Service Day in July.
- viii The Corporate Policy and Procedures Document on *RIPA* has been amended. I am in receipt of an updated version for review.

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