

Monitoring Officer's Annual Report 2017-18

Introduction

This is the Annual Report of the Monitoring Officer covering the period since the Council's Annual Meeting in May 2017.

At that time and up until 28 February 2018 the Council's designated Monitoring Officer was Richard Wills, Executive Director for Environment and Economy. With effect from 1 March 2018 David Coleman, Chief Legal Officer was designated as the Monitoring Officer.

Role of the Monitoring Officer

The law requires the County Council to designate one of its senior officers as the Monitoring Officer.

The Monitoring Officer

- maintains an up-to-date version of the Constitution and ensures that it is widely available for consultation by Councillors, Officers and the public.
- ensures that the County Council acts and operates within the law, advising on whether decisions of the Executive are lawful and in accordance with the Budget and Policy Framework.
- is required to report to the full Council or to the Executive if he or she considers 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.
- reports to the Executive or 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.
- Helps to promote and maintain high standards of conduct by Council members, officers, partners and contractors.
- When required processes 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.
- ensures that the register of councillors' disclosable pecuniary interests is being maintained and considers applications in relating to the granting of dispensations.

Other Proper Officer roles

In addition to the above strictly Monitoring Officer roles this Report also covers other roles related to the Council's wider governance that do not necessarily result from the statutory functions of the Monitoring Officer. In particular, the roles of:-

- Senior Responsible Officer in respect of the Regulation of Investigatory Powers Act and reporting on Covert Surveillance;
- Responsible Officer for the Council's Whistle Blowing Policy (Confidential Reporting Code) ensuring that the Audit Committee receives an Annual Report from the Head of Corporate Audit.
- 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. This includes leading and fostering a culture that values, protects and uses information for the public good.

This Report covers all of these various responsibilities.

Statutory Monitoring Officer Reports

There were no occasions where the Monitoring Officer 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, no reports have been issued to the council under Section 5(2) of the Local Government and Housing Act (1989).

Local Government Ombudsman's findings of maladministration

In 2017-18 there were 49 referrals to the Local Government Ombudsman, down from 50 in 2017/18. Of these:

- 25 (up from 17) were considered by the LGO to be premature, not relevant to LCC or out of the Ombudsman's jurisdiction;
- 7 no fault was found by the LGO
- 6 are ongoing
- 11 (up from 8) cases of maladministration were found

Of the cases of maladministration, two resulted in a Public Report under section 31 of the Local Government Act 1974.

Annex 1 contains brief details of the decisions of maladministration published by the Ombudsman in 2017/18 including those that were the subject of a public report.

The Ombudsman publishes all of its decision notices on its website in anonymised form whether or not a finding is made against the Council.

Senior Information Risk Owner (SIRO)

In 2017-18 there were 210 security incidents recorded and investigated by the Council. This includes actual and suspected incidents, near misses, security weaknesses, and incidents where the root cause was the responsibility of a third party. Of these 158 were identified as actual incidents involving Council information or systems, 84% of which were deemed to have had a negligible impact on the council and/or third parties. None of the reported incidents were subject to onward reporting to the Information Commissioners Officer (ICO).

On the 25th May 2018 the General Data Protection Regulation (GDPR) comes into force in the UK. The regulation places a new obligation on organisations to report personal data breaches to the ICO if they meet a specific threshold. It is therefore expected that onward reporting to the ICO will increase significantly over the coming year.

Preparations for the wider implications of GDPR continue and significant progress has been made in developing a corporate framework that demonstrates an approach aligned with the new regulation. There is still considerable work to do as we resolve identified gaps, and improve and mature our approach, but we are in a reasonable position and can evidence activity that demonstrates the council is making proportional and balanced efforts to meet its obligations.

Standards

Councillors' Code of Conduct

In 2017-18 there have been a number of informal and formal complaints that councillors had allegedly breached the Code of Conduct. In most cases it was 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, has also 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 Christopher Riley. They have been consulted informally on a number of occasions but 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)

Trading Standards were the only department to use covert surveillance during 2017-18. In total 8 operations were approved:

- 7 Directed Surveillance operations
- 8 Covert Human Intelligence Sources (CHIS) operations.

All of these authorisations were subject to judicial approval.

There has been no live inspection since the one reported in 2017 and none is currently scheduled as the Council completed a satisfactory paper submission on its current use of RIPA to the Office of the Surveillance Commissioner earlier in 2018.

Whistleblowing

The administration of the Confidential Reporting Policy is undertaken by Internal Audit. The last report was submitted to the Audit Committee in November 2017 covering whistleblowing activity in the year 2016/17.

The number of whistleblowing concerns raised has remained consistent with previous years – although the sharp rise in the number of potential fraud cases was noted.

The continued high levels of disclosures made through the reporting line provides the assurance that the Council's arrangements remain effective and whistleblowers continue to have confidence in the facility.

ANNEX 1

PUBLISHED FINDINGS OF MALADMINISTRATION BY THE LOCAL GOVERNMENT OMBUDSMAN

Public Reports

- 1) The Council was at fault when it allowed Mrs A's placement in residential care to continue for 10 months and placed Mrs A in a dementia unit. Further, the Council was at fault for failing to act in line with the Care Act 2014 by not revising Mrs A's care and support plan when circumstances changed. The fault meant Mr and Mrs A could not live together as a married couple for 10 months. This caused avoidable distress and Mr A incurred daily travel expenses in visiting his wife.

This case was considered by full Council on 15 September 2017. The Ombudsman's findings and recommendations were accepted and have been acted on.

- 2) The Council did not act in line with the Care Act 2014 or the guidance when it responded to Ms B's request for assistance in support for Mr C. The Council failed to:
 - offer a care home within Mr C's personal budget;
 - pay the full fee the care home charged when no care home within the personal budget was identified;
 - explain a person's rights and the Council's duties under the Care Act;
 - offer Mr C a personal budget;
 - offer the option to pay the top-up fee to the Council;
 - intervene when Mr C was threatened with eviction from the care home; and
 - properly address the threatening and intimidating language used by the care home.

This case was considered by the Executive on 6 March 2018 following consideration by Adults and Community Wellbeing Scrutiny Committee. The Ombudsman's findings were accepted. The Ombudsman's recommendations for compensating the complainants were accepted and have been acted on. The Ombudsman's wider recommendations concerning its payment processes for third party contributions is the subject of a wider review and will be the subject of a further decision.

Other Decisions

- 1) The Council did not deal properly with Mr S's application to waive his wife's assessed charge for care services. The Council needs to reconsider his application. It also needs to make sure it keeps records of Panel decisions and the reasons for them, and communicates the reasons to applicants.

- 2) Ms A complained about delays in transferring within and discharge from hospital and a care home. She said the delays were because of unresolved funding issues and arranging a care package. The Ombudsmen found fault and that Ms A suffered distress and uncertainty. Ms A also complained about occupational therapy assessments which she said prevented her return home. The Ombudsmen found no evidence of fault in the assessments.
- 3) There was delay by the Council in assessing Mr C's adult social care needs. The Council could not provide directly commissioned care within an appropriate time. Mr B therefore felt obliged to enter into a direct payment arrangement to ensure the care was in place. To remedy the injustice to Mr B the Council agreed to pay him £500.
- 4) The Council offered to re-assess Mr Y for minor adaptations once it became aware that his DFG application was not progressing and some of his needs were unmet. There was no fault in the approach taken. However the Council delayed in responding to Mr Y's complaint and used a multiple stage complaint procedure. This fault caused time and trouble which the Council agreed to remedy with a payment of £100 and some procedural changes.
- 5) The Council was not at fault for not providing the therapies set out in C's SEN statement between October 2015 and September 2016. C had a place at a school which should have been able to deliver the therapies, but Mr and Mrs B refused to send him there. The Council was at fault, however, for failing to meet the terms of C's statement when he returned to school in September 2016, and for most of the 2016/17 school year. The Council agreed to pay Mr and Mrs B £1000 to be used for C's educational benefit. This remedied C's injustice.
- 6) There was some fault with the Council's actions following a school admission appeal hearing for Mr A and Ms B's son. The Council agreed to apologise for the injustice caused.
- 7) Ms X complained that the Council failed to properly consider her request for her son, Y, to start Reception in School A, a year later than usual. The Ombudsman found fault in how the Council made its decision. He recommended the Council provide an apology, consider the request again and reviews its procedures.
- 8) The Council failed to properly manage the transfer of an SEN statement to an EHC plan. There was substantial delay in dealing with the transfer. The delay caused injustice to the complainant and her family.
- 9) The Council was guilty of delay in carrying out its calculation of Mr B's mother's disability related expenditure to reflect the receipts provided and of failing to tell Mr B's mother about the implications of a change in policy. The Council has amended its calculation of Mr B's mother's disability related expenditure and an apology was a satisfactory remedy for the delay and for failing to tell Mr B's mother about the implications of the change in policy.