

## Regulatory and Other Committee

<b>Open Report on behalf of David Coleman, Monitoring Officer</b>	
Report to:	<b>Audit Committee</b>
Date:	<b>13 July 2020</b>
Subject:	<b>Monitoring Officer's Annual Report</b>
<b>Summary:</b> This Report introduces the Annual Report of the Monitoring Officer for 2019/20 as provided for by the Committee on 18 November 2019.	
<b>Recommendation(s):</b> That the Audit Committee receives and considers the Monitoring Officer's Annual Report.	

### Background

At its meeting on 18 November 2019 the Audit Committee resolved that an annual report from the Monitoring Officer be brought to the Audit Committee. This report sets out that Annual Report.

### 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 designated in this role since 1 October 2018.

Under the Constitution 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. I advise on whether decisions of the Executive are lawful and 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 or maladministration. Such a report would have the effect of stopping the proposal or decision being implemented until the report has been considered.

I report 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 the Local Government Act 1974.

I also help promote and maintain high standards of conduct by Council members, officers. When required I process complaints about alleged breaches of the members' 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 am responsible for ensuring that the register is being maintained and consider applications in relating to the granting of dispensations.

In addition to the above I also fulfil duties that do not necessarily result from the statutory functions of the Monitoring Officer. In particular I am:-

- the Senior Responsible Officer in respect of the Regulation of Investigatory Powers Act 2000; and
- the Responsible Officer for the Council's Whistle Blowing Policy (Confidential Reporting Code). The Audit Committee receives an Annual Report on this from the Head of Corporate Audit.

### **Ensuring Lawfulness**

Every Decision-Making Report that comes before the County Council, the Executive or an individual Executive Councillor is required to contain a Legal Comment.

As a result there is a robust process for identifying the legal issues raised by any proposed decision and ensuring that these are addressed in the Report. This consideration of legal issues deals with the powers of the Council to take the steps proposed, any procedural issues such as the requirement for consultation, the way in which the decision is proposed to be implemented (e.g. compliance with procurement obligations) and the rationality of the decision – i.e. whether the report sets out a legally sound case for the course of action recommended.

I am pleased to report that as a result of these controls there were no occasions where the Monitoring Officer had to issue a formal report relating to the lawfulness of a decision.

### **Local Government and Social Care Ombudsman**

In 2019/20 there were 55 referrals to the Local Government Ombudsman, down from 77 in 2018/19. Of these:

- 40 (down from 66) resulted in no fault being found by the LGO either because the complaint was premature or otherwise not investigated or because it was investigated and no fault found
- 8 of these were cases where as a result of an investigation, no fault was found
- 20 referrals were not investigated
- Of these, 12 were premature
- 9 referrals are ongoing
- 6 (down from 11) cases of fault were found

The areas where fault were found can be summarised as follows:

<b>Fault</b>	<b>Action Taken</b>
The Council failed to provide the one-to-one education specified in a child's Education, Health and Care Plan	The Council agreed to pay a financial remedy for the distress caused and for any shortfall in the child's education
The Council failed to follow its procedure when considering a safeguarding referral, failed to document its decision and there was delay in completing an investigation. That did not affect the Council's decision but caused the complainant some distress.	An apology was given and a reminder issued to officers.
The Council's commissioned care provider stopped a service user's medication. The care provider was at fault for stopping medication without checking with a GP. This did not cause significant harm to the service user but caused some confusion.	The care provider has already amended its medication procedures. The Council has agreed to apologise for the confusion caused.
The Council had mishandled the complainant's son's Education Health and Care Plan.	The Council had already apologised, which was accepted by the Ombudsman as a suitable remedy.
The Council did not properly explain what a service user needed to pay towards residential care. This caused the complainant to incur debt that the care provider then sought to recover from the service user in a way the Council accepts was unacceptable.	<p>The Council has recognised that its communications fell short of best practice. The Council agreed to apologise, pay compensation meet the outstanding debt and address the care provider's behaviour.</p> <p>The Council has also agreed to review its existing contract arrangements for the recovery of payments from service users in the light of Care Act statutory guidance.</p>

The Council failed to ensure the complainant's daughter received the provision outlined in her EHC Plan.	The Council agreed to pay compensation
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In addition to the above cases the Ombudsman in January 2020 issued a second public report into a case that the Council originally responded to in July 2018.

In his original report, dated 17 November 2017, the Ombudsman found that the Council's payment process for Third Party Contributions relating to residential care amounted to a departure from the Care Act guidance for which the Council had given no cogent reason and therefore amounted to maladministration. He recommended that the Council changed its payment arrangements so that instead of paying the care home after the care home had first failed to collect payment from the third party, the Council should pay the full amount to the care home from the start.

This Report was considered by the Adult Scrutiny Committee on 14 February 2018 and the Executive on 6 March 2018. A review was carried out and on 10 July 2018 the Executive Councillor for Adult Care, Health and Children's Services approved changes to the Council's contractual arrangements but did not to accept the Ombudsman's recommendation. The Council agreed to review its payment arrangements again in 2021/22.

On 30 January 2020 the Ombudsman issued a second public report expressing his dissatisfaction with the Council's response to his first report.

The Council has brought forward its proposed review of its payment arrangements and the results of this review and the Council's response to the Ombudsman's second report will be considered by Adults Scrutiny Committee in September and the Executive at the beginning of October.

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

## **Standards**

### *Councillors' Code of Conduct*

In 2019/20 the Council undertook a fundamental review of its Members' Code of Conduct and Local Arrangements for Dealing with Standards Complaints.

This was in response to a Report from the Committee on Standards in Public Life and was undertaken by a Working Group of members established by the Audit Committee which undertook a full review of the Code in the light of the CSPL recommendations.

The Working Group reported on its work to the Audit Committee on 18 November 2019 which recommended a number of changes to the full County Council which approved those changes at its meeting on 11 December 2019.

Those changes clarified and strengthened the Code in a number of areas including Gifts and Hospitality, co-operation with complaints, confidentiality, disclosure of disclosable pecuniary interests and bullying and harassment.

The Local Arrangements for dealing with Standards Complaints were significantly amended laying out in much more detail how members of the public should complain and how they can expect any complaint to be dealt with.

### *Complaints*

From 1 April 2019 to 31 March 2020 I received 7 complaints of breaches of the Code of Conduct. None of these had been made by one County Councillor against another County Councillor. All were from members of the public. Three of these related to the heading of Respect only. Two related to the heading of objectivity. One related to the heading of honesty. One of these related to a number of headings under the Code. All of the complaints were deemed to relate to activity in the capacity of County Councillor. Six of the complaints were judged not to engage the Code of Conduct. One of the complaints engaged the Code of Conduct but did not call for an investigation because the behaviour complained of did not have a significant impact on the reputation of the Council as provided for under the Local Arrangements at the time.

There have been no formal hearings under the Local Arrangements.

This pattern reflects the position reported by the Code of Conduct Working Group to the Committee in November 2019 which identified a low number of complaints between September 2018 and 2019. Since that Report only one further complaint has been received. This further reflects the findings of the Ethical Governance Audit reported to the Audit Committee on 25 March 2019.

### *Independent Persons*

The Council appoints Independent persons to assist it in determining any outcomes of an investigation. The Council currently only has one Independent Person, Alan Pickering. I have consulted Mr Pickering informally on several occasions in dealing with complaints.

A recruitment process to identify an additional Independent Person in 2019 was unsuccessful but a renewed attempt will be made when circumstances are appropriate.

### **Register of Councillors' disclosable pecuniary interests**

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

Members' disclosures are reviewed on a regular basis by the Head of Democratic Services.

## **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.

An Audit undertaken in 2019/20 identified only limited assurance around Officers' Interests since when an action plan has been put together to address the concerns progress with which is reported to the Audit Committee.

## **Regulation of Investigatory Powers Act (RIPA) 2000**

Under the above Act the Council is able to authorise the use of covert surveillance of two types:-

- Directed surveillance which is surveillance not carried out in residential premises or a private vehicle and which is conducted for the purposes of a specific investigation or operation. This can only be used for more serious types of offence; and
- The use of Covert Human Intelligence Sources which includes undercover officers, public informants and people who make test purchases

Once the Council has authorised the use of such surveillance the authorisation must be approved by a Justice of the Peace before it can be acted on

The Council is regulated in its use of these powers by the Investigatory Powers Commissioner's Officer (IPCO).

Trading Standards were the only department to use covert surveillance during 2019/20. In total 5 operations were approved:

- 1 Directed Surveillance application
- 4 Covert Human Intelligence Sources (CHIS) operations.

The Council has not been inspected by IPCO in recent years. Instead, the County Council makes a statistical return in response to which the Commissioner may seek further assurance if necessary. The Commissioner has been satisfied with the County Council's returns probably due to low level of covert surveillance activity undertaken by the Council.

Clear authorisation procedures are in place for the exercise of RIPA powers by the Council which are administered from within Legal Services.

## **Whistleblowing**

The administration of the Confidential Reporting Policy is undertaken by Internal Audit. The last report was submitted to the Audit Committee in November 2019.

## Conclusion

The Report sets the Monitoring Officer Annual Report for 2019/20. It provides the Committee with information from which it can carry out its assurance function in relation to areas of the Council's business which fall within the Monitoring Officer's remit.

## Consultation

### a) Have Risks and Impact Analysis been carried out?

No

### b) Risks and Impact Analysis

N/A

## Appendices

None

## Background Papers

Document title	Where the document can be viewed
Report to Audit Committee 18 November 2019 – "Code of Conduct Working Group Report"	Democratic Services
Report to County Council 11 December 2019 – "Members' Code of Conduct"	Democratic Services

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