

Agenda Item 8



Open Report on behalf of Andrew Crookham – (Executive Director of Resources)

Report to:	Audit Committee
Date:	12 July 2021
Subject:	Monitoring Officer Annual Report

Summary:

This report introduces the Annual Report of the Monitoring Officer for 2020/21.

Recommendation(s):

That the Audit Committee receives and considers the Monitoring Officer's Annual Report

Background

1. 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 for the period 1 April 2020 to 31 March 2021.

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. 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 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 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 a number of 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 Internal Audit and Risk Management.

The Impact of Covid-19

The most significant feature of 2020/21 in governance terms has been the impact of the coronavirus pandemic.

As recently confirmed by the High Court a meeting of the Council or one of its committees including the Executive must take place at specific location and in order for the meeting to be valid members must be present in person at that location. From the point at which the lockdown was first implemented it became unlawful for members to gather indoors and meetings therefore became impossible.

For the executive this did not prevent decisions being taken. The Leader of the Council is able to exercise executive functions and to authorise individual members of the Executive and officers to exercise them. Although meetings of the Executive were cancelled this did not prevent executive decision-making proceeding with reports and decision notices being published online in the usual way.

However other forms of Council decision-making including planning and audit depend on the meeting of a committee and the whole of the Council's Scrutiny function is carried out in that way. Although some business could be conducted informally, no formal decision-making or Scrutiny through committees could happen for a period between the beginning of lockdown and the introduction of remote meetings.

Remote meetings were introduced by the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 which come into force on 4th April 2020.

Following the implementation of the necessary technology the first County Council meeting held under the new Regulations was the Overview and Scrutiny Management Board meeting on 30 April 2020 followed by the Executive on 5 May 2020.

From that point on the Council's committees met regularly and the Council's usual means of conducting business have been followed. The 2020 Regulations expired on 6 May 2021 and since

then the Council's committees have returned to being held in person with some virtual attendance by officers.

A second impact of the pandemic has been on the need for urgent decision-making especially during the height of the response. Normally the Council must give at least 28 days' notice of its intention to take a key decision. The law allows for the taking of urgent key decisions but requires a special procedure to be followed requiring consultation with the Chairman of the relevant Overview and Scrutiny Committee.

The Council invoked this urgency procedure on three occasions during the pandemic, in relation to decisions on:-

- the procurement of temporary mortuary capacity;
- the commissioning of designated Covid-19 care home beds; and
- the provision of community coronavirus testing facilities

All of these decisions were later reported to full Council in accordance with legal requirements.

The County Council's decision-making processes and its compliance with legal requirements have operated successfully during the pandemic. Remote meetings have been well administered and run smoothly with members and officers adapting well to the specific disciplines and protocols associated with meeting virtually.

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 2020/21 there were 48 referrals to the Local Government and Social Care Ombudsman (LGO), down from 55 in 2019/20. Of these:

- 29 (down from 43) 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
- 3 of these were cases where as a result of an investigation, no fault was found
- 18 of these referrals were not premature but the Ombudsman chose not to investigate them for some reason. Examples include that the complainant had a legal remedy or because it was not within the Ombudsman's jurisdiction
- The remaining 8 were premature
- 15 referrals are ongoing

- Overall 5 findings of fault were made during the year resulting from referrals made within the year or outstanding from the previous year
- One of these findings of fault, one resulted in a public report

The areas where fault were found without the issue of a public report are as follows:

Fault	Action Taken
Miss H complained the Council reduced her direct payment without explaining why; did not provide her with copies of her reviews or care and support plan and was unreasonably seeking repayment of some of the direct payment without explaining how the sums had been mis-spent.	The Council accepted faults in the way it communicated with Miss H. Future reviews will clearly evidence how well the budget has worked and will identify support that may be needed in the use of the budget. Any future assessments will be consultative.
The ombudsman partially upheld Mr S's complaint about his father's (Mr F) discharge from hospital to a residential care home. Insofar as the findings related to the County Council, it was found that:- <ul style="list-style-type: none"> • There was no evidence of a mental capacity assessment having been carried out • there was no record of the pre-admission assessment or the information shared by the Council with the Home • The pre-admission assessment did not identify relevant information about Mr F's medical conditions and disabilities • The pre-admission assessment incorrectly concluded the Home could meet Mr F's needs. 	The Council now employs a Community Care Nurse Specialist in each of its teams across Lincolnshire hospital sites. The nurses support social workers onward visits and with discharges, and can challenge decisions about discharges they consider inappropriate. The Council accepted a recommendation to ensure relevant staff and the Home are reminded of their duties under the Mental Capacity Act 2005 and their duties to consider reasonable adjustments.
Mrs X complained the Council had failed to provide a suitable full-time education to her child, Y, who could not attend school because of anxiety and other health problems. The Council was at fault for not ensuring a suitable education for Y from October 2019 to February 2020. When Y did not meet the criteria for attendance at the Council's provider of specialist alternative provision the Council failed to recognise that it nevertheless had a responsibility to ensure alternative provision was made and was therefore at fault	The Council agreed to review how it provides education to those who are unable to attend school or are unable to provide the required specialist medical evidence. It also agreed to review its policies to include circumstances for when referrals to the specialist school are not accepted.
The Council failed to follow the guidance when carrying out an age assessment and did not provide Mr B with a written record of the decision and how to challenge it.	Since this case the Council has completed updated training for all children's service managers on exploitation and modern-day slavery.

On 16 March 2021 the Ombudsman issued a public report finding maladministration in the way that the Council charged a flat rate for short term care which he found was not in accordance with Guidance. He recommended that the Council reimburses those people it has already identified as having overcharged based on the figures it already has available; and estimates the remaining cases (for people who are still alive) on the basis of financial information currently available to the Council. If this is not possible, offers those people a retrospective financial assessment and calculates any refunds due for those who respond to the Council's offer. For the avoidance of doubt, there is no need for the Council to take any action for those who do not respond to its offer of a retrospective financial assessment.

The Report is due to be considered by the Adult Care and Community Wellbeing Scrutiny Committee on 14 July 2021 and the Executive on 7 September 2021. The Council has already changed its Charging Policy to remove the flat rate charge and carry out a financial assessment on all short term placements.

In my last Annual Report I referred to a case in which the Ombudsman had issued a second public report into a case that the Council responded to in July 2018.

The case related to Third Party Contributions paid in respect of adult residential care. Under the Council's contracts with the Third Party and the relevant care home provider it is the care home provider who makes the first attempts to collect the Third Party Contribution from the Third Party. If these attempts are not successful then the Council makes payment to the care home and seeks to recover the Third Party Contribution from the Third Party. This was referred to as a net payment arrangement. The Ombudsman found that the net payment arrangement was not compliant with Care Act statutory guidance.

In its response to the Ombudsman's original report the Council decided to make some consequential changes to the Council's contractual arrangements but not to accept the Ombudsman's recommendation to move to a system where the Council paid the full amount to the care home from the start. This was referred to as a gross payment arrangement.

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.

As a result, the Council brought forward its intended review and the Executive considered the second report and the results of the review on 6 October 2020 and on the basis of the review decided to move to a gross payment arrangement.

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

Complaints

From 1 April 2020 to 31 March 2021 there were 5 complaints of breach of the Code of Conduct. This is two less than in 2019/20. None of these had been made by one County Councillor against another County Councillor. All were from members of the public.

Two of the complaints did not fall within the Code of Conduct as they related to the way in which the councillors in question carried out their role as members. One complaint did not relate to the actions of the member in their capacity as an elected member.

The two remaining cases raised allegations under a number of the Code headings but on examination did not give rise to breaches of the Code of Conduct.

There have been no formal hearings under the Local Arrangements.

This pattern reflects the position in previous years of a low number of complaints.

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 a several occasions in dealing with complaints.

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

Where a member has a disclosable pecuniary interest in a matter which would prevent them taking part in discussion or voting on an agenda item, the member can nonetheless take part in the debate and vote if they have a dispensation from the Monitoring Officer.

I issued 17 dispensations to members with business interests to enable them to take part in the budget debate at full Council on 19 February 2021 which contained a proposal to create a reserve to offer support to businesses.

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) 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; and
- The use of Covert Human Intelligence Sources which includes undercover officers, public informants and people who make test purchases

Trading Standards were the only department to use covert surveillance during 2020/21. In total one Covert Human Intelligence Sources (CHIS) operation was approved.

Although the Council has not been inspected by the Officer of the Surveillance Commissioner in recent years, instead, making a statistical return in response to which the Commissioner may seek further assurance if necessary, a remote inspection was undertaken in February 2021 resulting in a report dated 5 March 2021.

The Report stated that the inspection revealed a good level of compliance with all recommendations from the previous inspection having been discharged. No new recommendations were made.

The inspector was confident that the use of CHIS was compliant with legislation. The documentation was found to be well written, incorporating the relevant statutory considerations and assessment of risk. The approval process also appeared to be efficient, with the documentation put before the magistrates' court within two days of signing by the authorising officer.

Two minor observations were made relating to the commencement date of authorisations and the level of detail contained in cancellation documents.

Whistleblowing

The administration of the Confidential Reporting Policy is undertaken by Internal Audit. The Annual Report relating to the Whistleblowing Policy is a separate item on the Audit Committee Agenda for the meeting on 12 July 2021.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

Joint Strategic Needs Analysis (JSNA and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

Conclusion

The report sets the Monitoring Officer Annual Report for 2020/21. 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) Risks and Impact Analysis

The Report sets the Monitoring Officer Annual Report for 2020/21. 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.

Background Papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
Audit Committee Report dated 13 July 2020 – "Monitoring Officer's Annual Report"	https://lincolnshire.moderngov.co.uk/ieListDocuments.aspx?CId=133&MId=5491

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