



Open Report on behalf of David Coleman, Monitoring Officer

Report to:	Audit Committee
Date:	26 September 2022
Subject:	Monitoring Officer Annual Report

Summary:

This Report introduces the Annual Report of the Monitoring Officer for 2021/22.

Recommendation(s):

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 for the period 1 April 2021 to 31 March 2022.

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 had been the impact of the coronavirus pandemic and in particular the introduction of remote meetings.

As reported in my report from last year, from 7 May 2021 the Regulations allowing remote meetings expired and the legal position has returned to the pre-existing requirement that a meeting of the Council or one of its committees including the Executive must take place at a specific location and members must be physically present in person at that location in order to count as being present at the meeting and therefore being allowed to vote.

As a result, during 2021/22 decision-making at the Council very much settled back into its business as usual patterns.

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 2021/22 there were 68 referrals to the Local Government and Social Care Ombudsman (LGSCO) concerning Lincolnshire County Council. This is up from 48 in 2020/21. Of these 41 were not investigated by the LGSCO. Of the 27 that were investigated 15 of the investigations had not concluded at the date these figures were compiled and will fall into next year's report.

Of the remaining 12 cases:-

- 3 were remedied to the satisfaction of the LGSCO without the investigation being concluded
- 5 were investigated and no fault was found (up from 3)
- 4 resulted in findings of fault (down from 5)
- None of these resulted in a public report

The areas where fault were found are as follows:

Fault	Action Taken
<p>The LGSCO found the Council failed to provide Child A suitable education for ten months. It also delayed in carrying out the EHCP process and failed to maintain effective contact with Mrs H. There was also a fundamental failing by the Council to properly recognise that Child A was not receiving elective home education.</p>	<p>A written apology was provided to both Mrs H and Child A which acknowledged the faults and injustice identified by the LGSCO. A payment of £2,500 (£250 per month of lost education) was made to be spent on the educational development of Child A. A payment of £500 was made to Mrs H to acknowledge the distress and uncertainty she had suffered, as well as for time and trouble.</p> <p>A senior officer of the Council undertook a review of Mrs H's case to identify the cause of the failings in its customer service responsiveness, delays in the EHCP process and a failure to provide suitable education provision. The Council identified service improvements in these areas to be implemented for the benefit of customers in the future.</p>
<p>Mrs B complained that the Council had not dealt properly with her son T's Education Health and Care Plan (EHCP) and his Special Educational Needs (SEN). The Council was at fault because there was a lack of communication and it delayed making a decision about a personal budget. Mrs B</p>	<p>The Council agreed to pay Mrs B £100.</p>

<p>had to spend more time than necessary chasing the Council.</p>	
<p>Mr and Mrs X complained that the Council delayed finalising amendments to Ms Y's Education, Health and Care plan and failed to tell them its intention to cease the plan. They say this meant it did not progress her transfer to a new school and Ms Y was out of education for a year. They also say the Council had not provided the provision in Ms Y's plan.</p> <p>The Council was at fault for failing to cease Ms Y's plan when it meant to and for delays in sending the amended plan. This caused Mr and Mrs X and Ms Y avoidable frustration and uncertainty.</p>	<p>The Council apologised to Mr and Mrs X for the frustration caused by the faults identified. The Council paid Mr and Mrs X £200 to recognise the impact the fault had on them; and Ms Y £200 to recognise the uncertainty the fault caused her.</p> <p>The service produced an action plan detailing the steps the service would take to reduce its backlog of annual reviews.</p>
<p>Miss X complained about the Council's decision to temporarily accommodate her son in an unsuitable short-term facility. The Council was found not to be at fault because the Council responded appropriately in response to an urgent police request.</p> <p>However, the LGSCO found fault with the way the Council responded to injuries sustained by her son while in its care.</p>	<p>The Council apologised in writing to Miss X and agreed to pay Miss X £250 to acknowledge the distress caused by its failure to properly consider whether C's injuries required medical attention.</p> <p>It has also taken steps to ensure the Unit (and any other similar establishments) have procedures in place to properly assess record and monitor injuries and accidents and to ensure staff are made aware of these procedures.</p>

As reported last year, on 16 March 2021 the LGSCO 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.

Since the date of last year's Report the LGSCO's findings and recommendations were 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. The findings and the recommendations of the LGSCO were accepted.

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 2021 to 31 March 2022 there were 29 complaints of breach of the Code of Conduct.

There were two occasions where I received multiple complaints against a single councillor arising out of a single incident.

The first of these involved 22 complaints against one councillor and the second involved 2 complaints against a different councillor

The remaining 5 complaints were individual complaints arising out of individual incidents.

In terms of separate complaints this is a significant increase over the 5 complaints received in 2020/21. In terms of incidents giving rise to complaints this is still an increase from 5 to 7 compared with 2021/22. None of these complaints were made by one County Councillor against another County Councillor. All were from members of the public.

None of the complaints led to further action either because the individual was not acting in their capacity as a councillor, the behaviour did not engage the Code of Conduct or was suitable for informal resolution.

There have been no formal hearings under the Local Arrangements.

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.

Following the murder of Sir David Amess MP in October 2021 all elected members were reminded of the right to request that their interests be treated as sensitive interests so that they do not appear on the register. Three such requests were received in respect of home addresses and approved.

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.

No dispensations were requested or granted during 2021/22.

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 2021/22. In total to Direct Surveillance operations and one Covert Human Intelligence Sources (CHIS) operation were approved.

Whistleblowing

The administration of the Confidential Reporting Policy is undertaken by Internal Audit and separately reported on to the Audit Committee.

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

As detailed in the report

Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by David Coleman, who can be contacted on 07741 606143 or david.coleman@lincolnshire.gov.uk.

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