



Open Report on behalf of David Coleman, Monitoring Officer

Report to:	Audit Committee
Date:	24 July 2023
Subject:	Monitoring Officer Annual Report

Summary:
This Report introduces the Annual Report of the Monitoring Officer for 2022/23.

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 2022 to 31 March 2023.

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.

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 2022/23 there were 64 referrals to the Local Government and Social Care Ombudsman (LGSCO) concerning Lincolnshire County Council. This is down from 68 in 2021/22 but still higher than the 48 in 2020/21. Of these 35 were not investigated by the LGSCO. Of the 29 that were investigated 8 of the investigations had not concluded at the date these figures were compiled and will fall into next year's report.

Of the remaining 21 cases:-

- 2 were remedied to the satisfaction of the LGSCO without the investigation being concluded

- 12 were investigated and no fault was found (up from 5)
- 7 resulted in findings of fault (up from 4)
- None of these resulted in a public report

The areas where fault were found are as follows:

Fault	Action Taken
<p>The LGSCO found that the Council was at fault when it failed to consider a complaint under the Children’s Services statutory complaints process. Although the complaint was over a year old the Council failed to have proper regard to the Guidance which raises a presumption in favour of considering such complaints.</p>	<p>The Council agreed to pay £150 compensation and consider the complaint at stage 2 of the statutory process</p>
<p>The LGSCO found that the Council was at fault for failing to review Mr B’s Education Health and Care Plan within statutory timescales and for failing on two occasions to send the necessary paperwork to Mr B at least two weeks prior to the date set for the review.</p>	<p>The Council agreed to apologise to Mr B and to Mr X, Mr B’s step-father, and to make a payment of £100 to Mr B and £100 to Mr X.</p>
<p>The LGSCO found that the Council was at fault for failing to provide Occupational Therapy provision contained in an Education Health and Care Plan for 11 months and failing to respond to correspondence from Miss X enquiring as to progress with her complaint.</p>	<p>The Council apologised to Miss X in writing. The Council also agreed to pay Miss X £300 in recognition of her avoidable distress and time and trouble and to pay her child, Z, £3,300 being £300 for every month of missed OT provision.</p> <p>The Council has also taken the following action to improve its services as recommended by the LGSCO:</p> <ul style="list-style-type: none"> • Reminded relevant staff of the duty to ensure the provision in an Education Health and Care Plan is in place within five weeks of a Tribunal’s order. • Reminded relevant staff that the Council should communicate any delays securing provision in an Education Health and Care Plan to the parent or young person. • Reminded relevant staff responsible for complaints that the Council should acknowledge and respond to complaints correspondence promptly.

<p>The LGSCO found that the Council was at fault for (i) delays in resolving a dispute regarding the calculation of Mrs X's assets and whether she was required to self-fund or contribute towards the cost of her care and (ii) delays and failings in communication with Mr X, Mrs X's husband.</p>	<p>The Council agreed to apologise to Mr X and pay him £250 in recognition of the frustration, distress and time and trouble he experienced as a result of the delays in resolving the dispute</p>
<p>The LGSCO found that the Council was at fault for delay in putting a support package in place for Ms D.</p>	<p>The Council agreed to apologise to Ms D's mother Mrs C for the time, trouble and distress caused by the delay in finding a care agency and pay her £500.</p>
<p>Mrs X complained about how the Council dealt with her request for additional education travel support for her child who was temporarily confined to a wheelchair after a planned surgery.</p> <p>There was fault by the Council in that it failed to clearly set out the post-16 transport payment process</p> <p>There was further fault and delay by the Council in dealing with and resolving Mrs X's request after she paid the post-16 transport contribution</p> <p>The Council missed the taxi support requirement Y needed due to her temporary medical and failed to return the risk assessment form needed to commence the service to the taxi company.</p>	<p>The Council has accepted its failings, agreed</p> <ul style="list-style-type: none"> • To apologise in writing to Y and Mrs X in recognition of the identified faults • pay Y £100 for the loss of some education during the period Y was left without a suitable taxi service • pay Mrs X's mileage allowance for the journeys to transport Y to and from school until the Council arranged a suitable taxi service for Y • by training or other means remind staff of the importance of providing residents with clear and robust information in a timely manner • provide the Ombudsman with a copy of and an update on the Council's 3-year transformation programme which is to address its communication processes and practice failings. <p>The Council will also</p> <ul style="list-style-type: none"> • review the communication strategies and practices of transfer of information between its various departments to ensure school transport applications are dealt with effectively and in a timely manner • review the Council's school and college transport policy and procedures to clearly set out transport payment processes, payment deadlines and transport support refund request criteria

	<p>to include post-16 transport payment process</p> <ul style="list-style-type: none"> • after the completion of the reviews above, by training or other means educate staff about the reviewed communication strategies and practices, the reviewed school transport policy in relation to the payment processes and refund request criteria • explain to the Ombudsman what steps the Council will take to monitor performance against timescales.
<p>Mr X complained the Council had not complied with the disability elements of the statutory guidance for the Traffic Management Act when it introduced an Experimental Traffic Regulation Order.</p> <p>The LGSCO found fault with the Council for failing to liaise and consult with local disability groups when designing its Experimental Traffic Regulation Order and for failing to consider completing an equality assessment and for poor record keeping.</p>	<p>The Council agreed to</p> <ul style="list-style-type: none"> • provide a public apology directed at local disability groups for the failure to liaise or consult with them before introduction of the Experimental Traffic Regulation Order. • Produce guidance and training to staff about the need to consider liaising and consulting with relevant stakeholders and representative bodies as part of the development of any Traffic Regulation Order. • Produce guidance and training to staff to staff about the need to consider equality and accessibility issues, including consideration of an assessment, as part of any Traffic Regulation Order. • Provide training to staff about the importance of record keep about its decisions.

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 2022 to 31 March 2023 there were 3 complaints of breach of the Code of Conduct.

This is a reduction from the 7 incidents giving rise to complaints in 2022/23. One of these complaints was made by one County Councillor against another County Councillor. The other two were from members of the public.

One of the complaints did not engage the Code of Conduct and one was referred to the relevant Group Leader with a view to informal resolution. One complaint is still under consideration.

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. Mr Pickering has indicated his wish to stand down and the Council is in the process of appointing replacement Independent Persons.

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.

No dispensations were requested or granted during 2022/23.

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

No authorisations were sought for the use of covert surveillance during the period covered by this Report.

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 2022/23. 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

The following background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

Background Paper	Where it can be viewed
Audit Committee Report dated 26 September 2022 titled "Monitoring Officer Annual Report"	Democratic Services

This report was written by David Coleman, who can be contacted at david.coleman@lincolnshire.gov.uk.

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