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# Monitoring Officer's Quarterly Update Report - 2016/17 Year End – Supporting Information

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## 1. Introduction/Background

- 1.1 The Localism Act 2011 was enacted on 15th November 2011 and it made fundamental changes to the system of regulation of the standards of conduct for elected and co-opted members of Councils and Parish Councils.
- 1.2 In order to ensure that the process was working effectively locally it was agreed that the Monitoring Officer would make quarterly reports to Governance and Ethics Committee which set out the number and nature of complaints received and inform Members of any other activity that was taking place around the Code of Conduct regime. It would also provide a means of updating the Committee on the progress of investigations.
- 1.3 It was also agreed that an annual report would be presented to Full Council at the Annual meeting and that the year end report would be circulated to all Town and Parish Councils. The annual report would include the quarter four activity. This report also includes a look forward to the forthcoming Municipal Year.

## 2. Governance Arrangements

- 2.1 At the Full Council meeting on the 02 July 2015 the then Standards and Governance and Audit Committees were merged. It was agreed that the membership of the revised Governance and Ethics Committee would comprise ten members (eight District Councillors appointed on a proportional basis and two co-opted non-voting Parish/Town Councillors).
- 2.2 The Advisory Panel and Independent Persons would be retained. The Monitoring Officer would be authorised to appoint three Independent Persons who would be used on a rotational basis on the Initial Assessment Panel and Advisory Panel. The Advisory Panel would comprise 8 Members: 2 from the Administration, 2 from the main opposition party, 2 parish/town councillors and 2 independent persons.
- 2.3 A revised Code of Conduct was adopted in September 2016. The Code and Governance arrangements are supported by a number of documents including:
  - Terms of Reference for the Governance and Ethics Committee and Advisory Panel;
  - Code of Conduct for West Berkshire District Councillors;
  - Gifts and Hospitality Code;
  - Complaints procedures for breaches of that code;
  - Dispensations procedure.

### **3. Independent Persons**

- 3.1 Under Section 28 of the Localism Act 2011 the Council has to ensure it has appointed at least one Independent Person who is consulted before any decision is made to investigate an allegation against any Member of the Council or any Parish Councillor. It was agreed at the Full Council meeting on the 27 September 2012 that the Independent Person may be consulted directly either by the person who has made the complaint or the person the complaint has been made about. Three Independent Persons have therefore been appointed in order to ensure that a conflict situation does not arise.
- 3.2 James Rees, Mike Wall and Lindsey Appleton were appointed as the Council's Independent Persons for the 2016/17 Municipal Year. All three Independent Persons have agreed to remain as Independent Persons for the 2017/18 Municipal Year.
- 3.3 A person is not considered to be "independent" if:-
- (i) They are or have been, within the last five years, an elected or co-opted Member or officer of the Council or of any Parish Council's within this area. This also applies to committees or sub-committees of the various Councils.
  - (ii) They are a relative or close friend of a current elected, or co-opted, Member or officer of the Council or any Parish Council within its area, or any elected or co-opted member of any committee or sub-committee.
  - (iii) The definition of relative includes the candidate's spouse, civil partner, grandparent, child etc.

In addition The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 require provisions to be made relating to the potential dismissal or disciplining of the Head of Paid Service, Monitoring Officer or Section 151 Officer. A panel needs to be set up to advise on matters relating to the dismissal of these Officers. The Act requires at least two Independent Persons who have been appointed under section 28(7) of the Localism Act 2011 to be appointed to the panel. The role of the Independent Persons therefore includes the requirement of this legislation.

### **4. Governance and Ethics Committee**

- 4.1 The overall purpose of the Governance and Ethics Committee is to provide effective challenge across the Council and independent assurance on the risk management and governance framework and associated internal control environment to members and the public, independently of the Executive. The Governance and Ethics Committee is also responsible for receiving the annual Audit Letter and for signing off the Council's final accounts.
- 4.2 The Committee is charged with promoting and maintaining high standards of conduct throughout the Council. They promote, educate and support Councillors (both District and Parish) in following the highest standards of conduct and ensuring that those standards are fully owned locally. The roles and functions of the Governance and Ethics Committee are set out in paragraph 2.8.4 of the Constitution (Part 2 Articles of the Constitution).

4.3 During 2016/17 the Governance and Ethics Committee comprised the following Members:

- (1) Steve Ardagh-Walter (Conservative)
- (2) Jeff Beck (*Vice-Chairman*) (Conservative)
- (3) Graham Bridgman (Conservative)
- (4) Keith Chopping \* (*Chairman*) (Conservative)
- (5) James Cole (Conservative)
- (6) Anthony Pick (Conservative)
- (7) Quentin Webb (Conservative)
- (8) Lee Dillon (Liberal Democrat)
  
- (9) Sheila Ellison (Substitute) (Conservative)
- (10) Tim Metcalfe (Substitute) (Conservative)
- (11) Billy Drummond (Substitute) (Liberal Democrat)

\* Councillor Keith Chopping replaced Councillor Rick Jones on this Committee in September 2016 when Councillor Jones was appointed to the Executive.

4.4 The Governance and Ethics Committee has a special responsibility to the 56 Town and Parish Councils within the District. It is responsible for ensuring that high standards of conduct are met within the parishes and that all Parish and Town Councillors are aware of their responsibilities under their Codes of Conduct.

4.5 The District Councillors are therefore supported on the Governance and Ethics Committee by two co-opted Parish Councillors who are appointed in a non-voting capacity. During 2016/17 the Governance and Ethics Committee comprised the following Parish Councillors:

- (1) Barry Dickens (co-opted non voting Parish Councillor)
- (2) Chris Bridges (co-opted non voting Parish Councillor)

4.6 Councillor Chris Bridges has indicated that due to work and personal commitments he will no longer be able to undertake this role. The Monitoring Officer has therefore undertaken a recruitment process to identify a replacement. It is proposed that for the 2017/18 Municipal Year the Council will also appoint one substitute Parish/Town Councillor to the Committee. The Council is asked to recognise Councillor Bridge's contribution to the Committee and to thank him for that contribution.

4.7 It is proposed that during 2017/18 the Governance and Ethics Committee will comprise the following Parish Councillors:

- (1) Barry Dickens (co-opted non voting Parish Councillor)
- (2) Geoff Mayes (co-opted non voting Parish Councillor)
- (3) Jane Langford (substitute co-opted non voting Parish Councillor)

## **5. Advisory Panel**

5.1 The Advisory Panel is responsible for dealing with complaints where evidence of a breach of the Code has been identified by an independent investigator and reports its findings to the Governance and Ethics Committee for formal decision.

5.2 The District Councillors on the Advisory Panel are representatives of both political groups within the Council and are not appointed in accordance with the proportionality rules. During 2016/17 the Advisory Panel comprised the following District Councillors:

- Adrian Edwards (Conservative)
- Marigold Jaques (Conservative)
- Mollie Lock (Liberal Democrat)
- Alan Macro (Liberal Democrat)

5.3 During the 2016/17 Municipal Year the following Parish Councillors were appointed to the Advisory Panel:

- Tony Renouf
- Darren Peace

6. It is anticipated that for the 2017/18 Municipal Year the Council will also seek to appoint one substitute Parish/Town Councillors to the Panel. It is proposed that during 2017/18 the Governance and Ethics Committee' Advisory Panel will comprise the following Parish Councillors:

- Tony Renouf
- Darren Peace
- Bruce Laurie (substitute)

## **7. The Monitoring Officer**

7.1 In West Berkshire Council the role of the Monitoring Officer is a statutory post and rests with the Head of Legal Services. The Monitoring Officer has a key role in promoting and maintaining standards of conduct. The Monitoring Officer acts as legal adviser to the Governance and Ethics Committee and Advisory Panel.

7.2 The Monitoring Officer also carries out the following functions:

- reporting on contraventions or likely contraventions of any enactment or rule of law and reporting on any maladministration or injustice where the Ombudsman has carried out an investigation;
- establishing and maintaining registers of Members' interests and gifts and hospitality;
- maintaining, reviewing and monitoring the Constitution;
- advising Members and Parish Councillors on interpretation of the Code of Conduct;
- conducting or appointing an external investigator to look into allegations of misconduct;
- performing ethical framework functions in relation to Parish Councils;
- acting as the proper officer for access to information;
- undertaking an initial assessment , in consultation with the Independent Person, when complaints relating to alleged breach of the Code of Conduct are received;

- making arrangements for relevant matters to be considered by the Governance and Ethics Committee and Advisory Panel;
- advising whether Executive decisions are within the policy framework; and
- advising on vices issues and maladministration, and in consultation with the Section 151 Officer financial impropriety, probity, and budget and policy issues to all Members.

## **8. The Work of the Committee 2016 – 2017**

- 8.1 A small member Task Group was set up to review the Code of Conduct for West Berkshire Councillors as well as the Gifts and Hospitality Protocol. Following this piece of work the Councillors Code of Conduct and the Gifts and Hospitality protocol (Appendices to Part 13 of the Constitution) were amended at the September 2016 Council meeting.
- 8.2 One of the functions of the Governance and Ethics Committee is to oversee the Council's Constitution. The Council is therefore asked to note that since April 2016 Part 11 (Contract Rules of Procedure) has been amended by Full Council.
- 8.3 The Monitoring Officer, under their delegated authority, has authorised changes to the following parts of the Constitution since April 2016: Part 1 (Summary and Explanation), Part 2 (Articles of the Constitution), Part 3 (Scheme of Delegation), Part 4 (Council Rules of Procedure), Part 5 (Executive Rules of Procedure), Part 6 (Overview and Scrutiny Rules of Procedure), Part 7 (Regulatory and Other Committees Rules of Procedure), Part 10 (Finance Rules of Procedure), Part 11 (Contract Rules of Procedure) and Part 13 (Codes and Protocols).
- 8.4 The Head of Paid Service under his delegated authority has authorised changes to Part 15 (Management Structure) following the Senior Management Review that was agreed at the December 2016 Executive meeting.
- 8.5 Only one dispensation was granted in 2016/17 by the Monitoring Officer to allow Councillor Nick Goodes to speak and vote on matters pertaining to Council Tax.
- 8.6 The Monitoring Officer, under delegated authority, granted a dispensation to all West Berkshire Councillors to speak and vote on any items pertaining to Council Tax. This dispensation will remain in place until May 2019.

## **9. Register of Interests**

- 9.1 All elected Members of the West Berkshire Council have completed and submitted their Register of Interest forms. District Councillors are reminded to review their interests on a regular basis and Parish Councils are reminded via their Clerks to complete and return Declarations of Interest forms to the Monitoring Officer in order that compliance with the Localism Act 2011 is maintained. The Council is under a duty to ensure that details of Parish Councillors interests are on the District Council's website in accordance with the Act.

## **10. Local Assessment of Complaints**

***Quarter 1 (April to June 2016) and Quarter 3 (October to December 2016)***

- 10.1 During Quarters 1 and 3 of 2016/17 no formal complaints were received by the Monitoring Officer.

**Quarter 2 (July to September 2016)**

- 10.2 During Quarter 2 of 2016/17 one formal complaint was received by the Monitoring Officer. This complaint related to a Parish Councillor (NPC8/16). Following the initial assessment of this complaint it was determined by the Monitoring Officer, in consultation with the Independent Person, that no breach had been identified and that no further action needed to be taken.

**Quarter 4 (January to March 2017)**

- 10.3 During Quarter 4 of 2016/17 two formal complaints were received by the Monitoring Officer and both pertained to Parish Councillors. Following the initial assessment of complaint NPC1/17 it was determined by the Deputy Monitoring Officer, in consultation with the Independent Person, that a potential breach had been identified and that the matter should be investigated. An independent investigator has been appointed and the outcome of that investigation will be reported to the Advisory Panel in due course.
- 10.4 Following the initial assessment of complaint NPC2/17 it was determined by the Monitoring Officer, in consultation with the Independent Person, while not making any findings of fact, if the allegations were substantiated they would constitute a breach of the Parish Council's Code of Conduct. They determined that it would be appropriate to seek informal resolution of the complaint. This decision was made having regard to the seriousness of the allegations and the potential outcomes if an investigation was carried out. It was considered that informal resolution was a cost effective option and was likely to produce a more effective result. Additional training was offered to the subject member and any other parish councillor wishing to receive such training. The subject member was also asked to write a letter of apology to the complainants. The letter has been written and sent to the complainant and the matter is considered to be closed.

**11. Year on Year Comparison of Complaints**

- 11.1 Table 1 Number of District and Parish Councillor Complaints Received 2009/10 to 2016/17

	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17
<b>District Councillors</b>	4	4	5	8	2	2	16	0
<b>Parish Councillors</b>	7	5	6	10	5	7	10	3
<b>Total</b>	11	9	11	18	7	9	26	3

- 11.2 There has been a significant decrease in the number of complaints received during 2016/17. It is difficult to determine whether the reduction in the number of complaints is due to adherence to the various Codes of Conduct by Councillors or if the effectiveness of the sanctions available has deterred complainants.

Table 2 Action Taken on Complaints Received 2009/10 to 2016/17

	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17
<b>No Further Action</b>	<b>1</b>	<b>3</b>	<b>6</b>	<b>11</b>	<b>3</b>	<b>2</b>	<b>21</b>	<b>1</b>
<b>Other Action</b>	<b>5</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>1</b>
<b>Investigation</b>	<b>5</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>1</b>
<b>Withdrawn/ not progressed</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>0</b>
<b>Outcome awaited</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total</b>	<b>11</b>	<b>9</b>	<b>11</b>	<b>18</b>	<b>7</b>	<b>9</b>	<b>26</b>	<b>3</b>

Table 3 Outcome of Items Investigated 2009/10 to 2016/17

	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17
<b>Breach</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>
<b>No Breach</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>Outcome awaited</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>Total</b>	<b>5</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>3</b>	<b>1</b>	

## 12. Gifts and Hospitality

- 12.1 The Gifts and Hospitality Protocol has been incorporated into the Councillors Code of Conduct and is set out in Appendix H to Part 13 of the Constitution (Codes and Protocols). The intention of the Protocol is to ensure that the Council can demonstrate that no undue influence has been applied or could be said to have been applied by any supplier or anyone else dealing with the Council and its stewardship of public funds.
- 12.2 The Protocol sets out Councillors' obligations to declare any relevant gifts and hospitality which might be offered to or received by them in their capacity as a Councillor or to their spouse or partner as a result of their relationship with the Councillor.
- 12.3 A copy of the register for 2016/17 is attached at Appendix B to this report.

## 12. Conclusion

- 12.1 There has been a significant decrease in the number of complaints received in respect of alleged breaches of the Members Code of Conduct during 2016/17. It is not clear whether the reduction in the number of complaints is due solely to compliance by councillors with the Code of Conduct. It is possible that the limited sanctions available, in the event of a breach, has also deterred some complainants.
- 12.2 It is considered however that it is reasonable to conclude having regard to all the information in this report, that standards of ethical conduct are high across West Berkshire at both District and at Parish / Town Council levels.

### 13. Consultation and Engagement

- 13.1 The report will be circulated to all Town and Parish Councils following discussion at the Full Council meeting.

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#### Background Papers:

- Localism Act 2011
- Reports to Council 10 May 2012, Special Council on the 16 July 2012, Council on 15 September 2016
- Terms of Reference for the Governance and Ethics Committee and Advisory Panel;
- A new Code of Conduct for West Berkshire District Councillors
- Quarter 1, 2 and 3 of 2016/17 Monitoring Officer Reports to the Governance and Ethics Committee.

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#### Subject to Call-In:

Yes: ☐ No: ☒:

The item is due to be referred to Council for final approval ☒

Delays in implementation could have serious financial implications for the Council ☐

Delays in implementation could compromise the Council's position ☐

Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months ☐

Item is Urgent Key Decision ☐

Report is to note only ☐

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#### Wards affected:

All

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#### Strategic Aims and Priorities Supported:

The proposals will help achieve the following Council Strategy aim(s):

☒ **MEC – Become an even more effective Council**

The proposals contained in this report will help to achieve the following Council Strategy priority:

☒ **MEC1 – Become an even more effective Council**

The proposals contained in this report will help to achieve the above Council Strategy aims and priorities by ensuring that high ethical standards are maintained

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