
Monitoring Officer's Annual Report to the Governance and Ethics Committee – 2017/18 Year End – Supporting Information

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 produce an annual report which would be presented to the Governance and Ethics Committee. The report would 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 the report would be presented to Full Council at the Annual meeting and that it would be circulated to all Town and Parish Councils. This report also includes a look forward to the forthcoming Municipal Year.

2. Governance Arrangements

- 2.1 The Governance and Ethics Committee is comprised of ten members (eight District Councillors appointed on a proportional basis and two co-opted non-voting Parish/Town Councillors).
- 2.2 The Monitoring Officer is authorised to appoint three Independent Persons who are used on a rotational basis on the Initial Assessment Panel and Advisory Panel. The Advisory Panel comprises eight 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;
 - Gifts and Hospitality Protocol;
 - Complaints procedures for breaches of the Code of Conduct;
 - 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 2017/18 Municipal Year. All three Independent Persons have agreed to remain as Independent Persons for the 2018/19 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 Councils 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.

3.4 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.

3.5 The Council is asked to recognise the significant contribution of the Independent Persons and thank them for their contributions.

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 At the conclusion of 2017/18 the Governance and Ethics Committee comprised the following Members:

(1) Steve Ardagh-Walter (Conservative)

- (2) Jeff Beck (*Vice-Chairman*) (Conservative)
- (3) Paul Bryant (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) Jason Collis ** (Substitute) (Conservative)
- (11) Billy Drummond (Substitute) (Liberal Democrat)

* Councillor Keith Chopping replaced Councillor Graham Bridgman on this Committee in December 2017 when Councillor Bridgman was appointed to the Executive. Councillor Chopping replaced Councillor James Cole as the Chairman at this meeting too.

** Councillor Jason Collis replaced Councillor Garth Simpson as a substitute on this Committee at the 04 July 2017 Council meeting.

4.4 The Governance and Ethics Committee has a special responsibility regarding 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. A substitute is also appointed to this Committee. At the end of 2017/18 the Governance and Ethics Committee included 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)

4.6 All three Parish Councillors have agreed to be re-appointed to the Committee for the 2018/19 Municipal Year. The Council is asked to recognise the contribution of the Parish Councillors and thank them for their contributions.

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 2017/18 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 2017/18 Municipal Year the following Parish Councillors were appointed to the Advisory Panel:

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

5.4 Councillor Darren Peace has stood down as a Parish Councillor and is therefore no longer eligible to sit on the Panel. For the 2018/19 Municipal Year Councillor Bruce Laurie will therefore be appointed as a full member of the Panel. The Council is asked to recognise all the Parish Councillors' contributions to the Committee and to thank them for that contribution.

6. The Monitoring Officer

6.1 The Monitoring Officer is a statutory post and in West Berkshire rests with the Head of Legal Services. The Monitoring Officer is supported by three deputies. 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.

6.2 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.

7. The Work of the Committee 2017 – 2018

- 7.1 During the 2017/18 Municipal Year the Committee considered revised arrangements for scrutiny, and the Licensing Sub-Committee and Appeals Panel. In addition to the monitoring cycle for both internal and external audit the Committee also signed off the 2016/17 Financial Statements including the Annual Governance Statements and the final audit letter from the external auditors KPMG.
- 7.2 One of the functions of the Governance and Ethics Committee is to oversee the Council's Constitution. During the 2017/18 Year the Committee oversaw a significant rewrite of the Scheme of Delegation (Part 3 of the Constitution) and the Officer's Code of Conduct (which is included in Part 13, Codes and Protocols) of the Constitution.
- 7.3 The Monitoring Officer, under delegated authority, has authorised changes to the following Parts of the Constitution since April 2017 Parts 1 (Summary and Explanation), 4 (Council Rules of Procedure), 7 (Regulatory and Other Committees Rules of Procedure) and 10 (Finance Rules of Procedure).
- 7.4 The Monitoring Officer, under delegated authority, had previously 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. Councillor Jason Collis was appointed to the Council during the 2017/18 Municipal Year and he too applied for and was granted this dispensation. No other dispensations were granted during this period.

8. Register of Interests

- 8.1 All elected Members of 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.

9. Local Assessment of Complaints

- 9.1 During Quarter 1 of 2017/18 one formal complaint was received by the Monitoring Officer. This complaint related to a Parish Councillor (NPC3/17). 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.
- 9.2 During Quarter 2 of 2017/18 five formal complaints were received by the Monitoring Officer. Complaint NPC6/17 was subsequently withdrawn by the complainant. All five complaints related to Parish Councillors (NPC4/17, NPC5/17, NPC6/17, NPC7/17 and NPC8/17). Following the initial assessment of these complaints 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.
- 9.3 During Quarter 3 of 2017/18 four formal complaints were received by the Monitoring Officer. All four complaints related to Parish Councillors (NPC9/17, NPC10/17, NPC11/17 and NPC12/17). Following the initial assessment of these complaints 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.

- 9.4 During Quarter 4 of 2017/18 six formal complaints were received by the Monitoring Officer. Five complaints related to Parish Councillors (NPC1/18, NPC2/18, NPC3/18, NPC4/18 and NPC5/18) and the other to a District Councillor (NDC1/18). Following the initial assessment of complaint NDC1/18 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. Following the initial assessment of complaint NPC1/18 it was agreed that the matter should be investigated. Complaints NPC2/18, NPC3/18, NPC4/18 and NPC5/18 were received toward the end of March and will be by the Monitoring Officer in consultation with the Independent Person at an initial assessment in April 2017.
- 9.5 Following the initial assessment of complaint NPC1/17 in March 2017 it was determined by the Deputy Monitoring Officer, in consultation with the Independent Person, that a potential breach of Woolhampton Parish Council's Code of Conduct had been identified and that the matter should be investigated. An independent investigator was appointed to consider the complaint and they identified that a number of breaches of the Code of Conduct had occurred. The Advisory Panel met on the 13 December 2017 and they concurred with the investigator that a breach had occurred and identified a further breach of the Code of Conduct. A special meeting of the Governance and Ethics Committee took place on the 31 January 2018 to consider the matter and they resolved that several breaches of the Code of Conduct had happened.

10. Year on Year Comparison of Complaints

- 10.1 Table 1 Number of District and Parish Councillor Complaints received 2009/10 to 2017/18

	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18
District Councillors	4	4	5	8	2	2	16	0	1
Parish Councillors	7	5	6	10	5	7	10	3	15
Total	11	9	11	18	7	9	26	3	16

- 10.2 The number of complaints received during 2017/18 represented an increase from the previous year, when only three complaints were received. However, the figure represents only a slight increase on the average number of complaints received per annum since 2009/10.
- 10.3 Table 2 shows that, of the complaints received last year, to date only one complaint reached the threshold indicating a potential breach of a code of conduct necessitating a referral of the complaint for independent investigation.
- 10.4 It is also of note that ten of the complaints received were effectively related to only three issues. Specifically, three of the five complaints in quarter 2 related to issues arising at a single parish council, all four complaints received in quarter 3 pertained to another single incident, and three of the complaints in quarter 4 referred to issues that were related to each other.

10.5 Having regard to the above, the number of complaints remains relatively low. However management of these complaints should not be underestimated in terms of the time taken and resources required to reach a determination. This is particularly the case when an investigation takes place into a potential breach of a code of conduct, which can be a lengthy process involving multiple parties.

10.6 Some recent incidents have highlighted the potential for the system to be subject to abuse and further consideration needs to be given as to whether the Council should adopt a process whereby vexatious or other similar complaints can be dismissed without the full formal process currently engaged to complete the initial assessment stage.

10.7 Table 2 Action Taken on Complaints received 2009/10 to 2017/18.

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

10.8 Table 3 Outcome of Items Investigated 2009/10 to 2017/18.

	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18
Breach	2	1	2	0	0	1	1	1	0
No Breach	3	3	0	2	0	2	0	0	0
Outcome awaited	0	0	0	0	0	0	0	0	1
Total	5	4	2	2	0	3	1	1	0

11. Gifts and Hospitality

11.1 The Gifts and Hospitality Protocol has been incorporated into the Members Code of Conduct and is set out in Appendix H to Part 13 of the Constitution (Codes and Protocols).

11.2 Officers are also subject to restrictions on those Gifts and Hospitality that are deemed to be acceptable under the Officers' Code of Conduct, which is set out in Part 13 of the Constitution. Like Members, Officers are required to declare gifts or hospitality received.

11.3 The intention of the rules governing Gifts and Hospitality 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 service user, supplier or anyone else dealing with the Council and its stewardship of public funds. The rules therefore set out the obligations imposed on Members and Officers to declare relevant gifts and hospitality which have been offered to or received by them.

- 11.4 It should be noted that in addition to the risk that there could be a perception of impropriety, the acceptance of a gift or hospitality could amount to an offence under the Bribery Act 2010.
- 11.5 The Bribery Act 2010 creates a number of offences where a gift or other benefit is given or offered, which may amount to an offence of bribing another person, and/or of being bribed. Therefore, if Members or Officers are offered a 'gift' or other benefit by a third party, this could amount to an offence not just by the person offering the gift, but also by the Member or Officer concerned and by the Council. It is important to note that offences under this legislation can be committed by a person offering a gift or reward, even if the gift is not accepted.
- 11.6 In view of the above, it is very important that both Officers and Members understand the potentially serious implications of accepting gifts when it is not appropriate to do so.
- 11.7 A copy of the general register detailing Gifts and Hospitality declared by Members during 2017/18 is attached at Appendix B to this report. This records 16 separate gifts or hospitality offered and the fact that 15 of those offered were accepted. It is of note that one member was responsible for half of the items declared.
- 11.8 A copy of the register detailing Gifts and Hospitality declared by Officers for 2017/18 is attached at Appendix C to this report. This records that there were 64 declarations of gifts or hospitality declared by officers with 6 items being refused. A number of declarations record gifts to a number of officers declared as a single item so the actual number of individual gifts or hospitality received is higher than 64.
- 11.9 The declarations of gifts & hospitality can be broken down by directorate as follows:
- Communities – 28 (2 refused)
 - Economy & Environment – 25 (4 refused)
 - Resources - 11
- 11.10 The types of matters recorded in the Register of Gifts & Hospitality varies significantly. Of the items declared that estimated a value, these ranged between £5 and £120-150. Of those items recorded that had no known value declared against them, these included a gift of a pen to one officer (accepted) and an offer of a trip to Turkey to visit the Erasmus project (refused).
- 11.11 The number of declarations made suggests that there are significant differences in reporting amongst both Members and Officers. This suggests that there may be additional gifts or hospitality being offered and / or received by both Members and Officers which is not being recorded. Given the potential risks to the Council outlined above of failing to record this appropriately, this needs to be reviewed.
- 11.12 In light of the issues referred to above, the Monitoring Officer is going to review the Officers' Code of Conduct relating to the requirements governing gifts and hospitality. This has been raised at Finance & Governance Group and added to the rolling programme of review of the Constitution, and it is anticipated that any proposed revisions to the Code will be considered by Council during 2018.
- 11.13 Further work will also be required to ensure that the requirements regarding gifts and hospitality are fully and consistently applied.

12. Conclusion

- 12.1 Although there has been a rise in the number of complaints over the past year, it is considered that overall standards of ethical behaviour by Members at all levels across the district remain good. As stated in the report, a number of complaints that were received in 2017/18 originated from the same circumstances or facts, so the potential problems highlighted by the process is lower than the number of complaints received.
- 12.2 The number of complaints referred for investigation is also relevant when considering the overall position. Members will note that although the Monitoring Officer and Independent Person have considered or will consider 16 complaints, 10 were not progressed any further, one complaint was withdrawn, the outcome of four were awaited and one complaint would be investigated. This means that only one of the complaints considered to date demonstrated a potential breach of the relevant Code of Conduct.
- 12.3 Members at all levels also continue to seek the advice of the Monitoring Officer prior to engaging in activities which could give rise to difficulties under their respective Code of Conducts. That such advice is sought from the Monitoring Officer demonstrates an awareness amongst Members of the obligations placed upon them, and a desire to adhere to the relevant ethical standards.
- 12.4 Work will be undertaken as outlined in the report to ensure that standards of ethical conduct by all of those operating within the public sector remain high.
- 12.5 Overall, it is considered that the standards of ethical behaviour locally across West Berkshire at both District and Parish level are good and this achievement should be noted.

13. Consultation and Engagement

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

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

Subject to Call-In:

Yes: No:

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

Report is to note only

Wards affected:

All

Strategic Aims and Priorities Supported:

The proposals will help achieve the following Council Strategy aim:

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

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