
Monitoring Officer's Annual Report to the Governance and Ethics Committee – 2018/19 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 was comprised of ten members (eight District Councillors appointed on a proportional basis and two co-opted non-voting Parish/Town Councillors). The revised membership for 2019/20 will be agreed as part of the discussion at this Council meeting.
- 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 comprised 8 Members: 2 from the administration, 2 from the main opposition party, 2 parish/town councillors and 2 independent persons. The revised membership for 2019/20 will also be agreed as part of the discussion at this Council meeting.
- 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;
 - Social Media Protocol.

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 2018/19 Municipal Year. All three Independent Persons have agreed to remain as Independent Persons for the 2019/20 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 ongoing 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 also 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 2018/19 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) Jason Collis (Conservative)
- (6) Anthony Pick (Conservative)
- (7) Quentin Webb (Conservative)
- (8) Jeff Brooks (Liberal Democrat)
- (9) Sheila Ellison (Substitute) (Conservative)
- (10) Graham Bridgman (Substitute) (Conservative)
- (11) Alan Macro (Substitute) (Liberal Democrat)

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. Ideally two substitutes are also appointed to this Committee. During 2018/19 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)

* There was one vacancy for a substitute co-opted non-voting Parish Councillor on the Committee.

4.6 The Council is asked to recognise the contribution of the Parish Councillors and thank them for their contributions.

4.7 In terms of parish council appointments for 2019/20 all parishes have been contacted to see if they would like to nominate parish councillors to sit on this Committee or the Advisory Panel. A number of nominations have come forward. Training will be provided to any new parish councillors that are appointed to either the Governance and Ethics Committee or the Advisory Panel.

5. Advisory Panel

- 5.1 The Advisory Panel is responsible for dealing with complaints where evidence of a breach of the Code has been investigated by an independent investigator. The Advisory Panel considers the investigators report and its considerations are reported to the Governance and Ethics Committee which makes the formal decision in respect of allegations which have been investigated where it is considered that a breach of the relevant code of conduct has occurred.
- 5.2 The District Councillors on the Advisory Panel were representatives of both the main political groups within the Council and are not appointed in accordance with the proportionality rules. During 2018/19 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 2018/19 Municipal Year the following Parish Councillors were appointed to the Advisory Panel:
- Tony Renouf
 - Bruce Laurie
- *There were two vacancies for substitute Parish Councillors on this panel.
- 5.4 The Council is asked to recognise the Parish Councillors' contributions to the Panel 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 and Strategic Support Service. The Monitoring Officer (Sarah Clarke) in 2018/19 was supported by three deputies (Andy Day, Leigh Hogan and Shiraz Sheikh). 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 2018 – 2019

7.1 During the 2018/19 Municipal Year the work undertaken by the Committee included:

- (1) Consideration of the monitoring cycle for both internal and external audit.
- (2) The Committee reviewed the report of an external review of internal audit.
- (3) The Committee signed off the 2017/18 Financial Statements including the Annual Governance Statements and the final audit letter from the previous external auditors KPMG. The Committee is looking forward to working with the newly appointed external auditors Grant Thornton over the forthcoming year.

7.2 One of the functions of the Governance and Ethics Committee is to oversee the Council's Constitution. During the 2018/19 Year the Committee discussed and recommended changes to the following elements of the Constitution:

- (1) Part 2 (Articles of the Constitution)
- (2) Part 3 (Scheme of Delegation)
- (3) Part 10 (Finance Rules of Procedure)
- (4) Part 11 (Contract Rules of Procedure)
- (5) Social Media Protocols for both Officers and Members as set out in Part 13 (Codes & Protocols)

7.3 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 remained in place until May 2019. Councillor Jeff Brooks was appointed to the Council during the 2018/19 Municipal Year and he too applied for and was granted this dispensation. No other dispensations were granted during this period.

8. Register of Interests

All elected Members of West Berkshire Council (for 2018/19) 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. This process will be repeated for all Members elected in May 2019.

9. Local Assessment of Complaints

Matters outstanding from 2017/18

- 9.1 Three complaints were received on the 26th and 28th March 2018 which was too late for the outcome of those complaints to be included in last year's report. There was also one matter outstanding that had been referred for investigation. In the interests of transparency, details of these complaints are therefore included within this report.
- 9.2 Following the initial assessment of the three complaints referred to above, it was determined by the Monitoring Officer in consultation with the Independent Person, that no further action needed to be taken.
- 9.3 The matter that had been referred to investigation related to a complaint against a parish councillor (NPC1/18). When this complaint and the investigators report were considered by the Governance and Ethics Committee, it was determined that there had been a breach of the relevant Code of Conduct.

Quarter 1 – 2018/19

- 9.4 During this period, seven formal complaints were received by the Monitoring Officer.
- 9.5 One of the these complaints (NDC2/18) pertained to a District Councillor, five related to Parish Councillors (NPC6/18, NPC7/18, NPC8/18, NPC9/18 and NPC10/18) and one related to a co-optee (CoP1/18). This was the first complaint received about a person co-opted onto West Berkshire Council, however this complaint was later withdrawn.
- 9.6 NDC2/18 was investigated, but no further action was taken on three of the complaints and informal resolution was sought in respect of NPC8/18 and NPC9/18.

Quarter 2 – 2018/19

- 9.7 During Quarter 2 of 2018/19 five formal complaints were received by the Monitoring Officer.
- 9.8 All five complaints related to Parish Councillors (NPC11/18, NPC12/18, NPC13/18, NPC14/18 and NPC15/18).
- 9.9 Following the initial assessment of these complaints it was determined by the Monitoring Officer, in consultation with the Independent Person, that in the case of NPC13/18 and NPC14/18 no breach had been identified and that no further action needed to be taken.
- 9.10 The complainant in respect of complaint NPC11/18 and NPC12/18 had requested that their identity be kept confidential. The Monitoring Officer in consultation with the Independent Person considered the request and concluded that in these cases the complainant's confidentiality should not be withheld and the complainant therefore withdrew their complaint.

- 9.11 It was agreed that complaint NPC15/18 should be investigated. Complaint NDC2/18, which had been the subject of an investigation, was considered by the Advisory Panel in July 2018 and they concurred with the investigator's conclusion that a breach of the Code of Conduct had occurred. The matter was therefore referred to the Governance and Ethics Committee (August 2018) who agreed that West Berkshire Council's Code of Conduct had been breached.

Quarter 3 - 2018/19

- 9.12 In this period, nine formal complaints were received by the Monitoring Officer
- 9.13 Eight of the complaints listed under NPC16/18 pertained to the same event. The complaints were assessed individually and it was deemed that no breach of the Code of Conduct had occurred. NPC17/18 also pertained to a parish councillor and again the Assessment Panel concluded that no breach of the parish's Code of Conduct had transpired and that no further action needed to be taken.
- 9.14 The Advisory Panel and the Governance and Ethics Committee met in October to consider NPC1/18. Unusually the Committee meeting took place in private due to the sensitive nature of some of the information detailed within the investigators report. The Committee determined that a breach of the Code of Conduct had occurred.

Quarter 4 - 2018/19

- 9.15 One complaint has been received by the Monitoring Officer. (NPC1/19). The complainant has asked that the complaint be suspended pending the outcome of other legal proceedings.

10. Year on Year Comparison of Complaints

- 10.1 Table 1 – The Number of District and Parish Councillor Complaints received 2010/11 to 2018/19

	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19
District Councillors	4	5	8	2	2	16	0	1	1
Parish Councillors	5	6	10	5	7	10	3	15	20
Co-Optees	0	0	0	0	0	0	0	0	1
Total	9	11	18	7	9	26	3	16	22

- 10.2 The number of complaints received during 2018/19 represented an increase from the previous year, when 16 complaints were received. The figure also represented a significant increase on the average of 13 complaints per annum over the past ten years. It should be noted however that 8 of the complaints pertained to the same incident.
- 10.3 Table 2 shows that, of the complaints received to date in the vast number of cases (77%) either the complaint was withdrawn or no further action was taken on the complaint. Two complaints were referred for investigation and as is shown in Table 3. In one case the investigator and then the Governance and Ethics Committee agreed that a breach of the Code of Conduct had occurred. The other matter

referred for investigation was the subject of a separate report presented to the April 2019 Governance and Ethics Committee. The number of complaints investigated has remained relatively static at around two complaints per annum.

10.4 It is also of note that in addition to the fact that eight of the complaints related to a single incident, two parishes had been the subject of five and four complaints respectively.

10.5 Although the increase in the number of complaints was not hugely significant, the time and resources required to determine and manage these complaints should not be under estimated. 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 Table 2 - Action Taken on Complaints received 2010/11 to 2018/19.

	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19
No Further Action	3	6	11	3	2	21	1	13	14
Other Action	2	3	2	1	3	2	1	0	2
Investigation	4	2	2	0	3	1	1	1	2
Withdrawn/ not progressed	0	0	3	3	1	2	0	2	3
Outcome Awaited	0	0	0	0	0	0	0	0	1
Total	9	11	18	7	9	26	3	16	22

10.7 Table 3 - Outcome of Items Investigated 2010/11 to 2018/19.

	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Breach	1	2	0	0	1	1	1	1	1
No Breach	3	0	2	0	2	0	0	0	0
Outcome awaited	0	0	0	0	0	0	0	0	1
Total	4	2	2	0	3	1	1	1	2

11. Learning Points Arising from Complaints

11.1 Following the complaints that have been considered over the past year, changes have been made to the Council's Social Media Protocol and the Member Development Programme.

11.2 One complaint also resulted in recommendations being made by the Advisory Panel regarding potential penalties, which raised questions about the process because the Advisory Panel do not have the benefit of hearing mitigation that may be put forward by the subject member prior to making their recommendation.

11.3 In accordance with s28 of the Localism Act 2011, the Council must consult the Independent Person prior to making a decision in respect of any allegation that it

has decided to investigate. The Independent Person therefore sits on the Advisory Panel to ensure compliance with that legislative requirement.

- 11.4 An alternative to the current procedure would be to have the Independent Person sit as part of the Governance and Ethics Committee which receives the investigators report.
- 11.5 It is considered that the current process is adequate and it is therefore not proposed to make any changes at this time.

12. Gifts and Hospitality

- 12.1 The Gifts and Hospitality Protocol is incorporated into the Members Code of Conduct and is set out in Appendix H to Part 13 of the Constitution (Codes and Protocols).
- 12.2 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.
- 12.3 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.
- 12.4 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.
- 12.5 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.
- 12.6 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. This important issue was therefore one of the session items at the Senior Management Seminar which took place at Shaw House in June 2018.
- 12.7 A copy of the general register detailing Gifts and Hospitality declared by Members during 2018/19 is attached at Appendix D to this report.
- 12.8 There is a significant improvement on the number of declarations of gifts and hospitality received by Members increasing from 16 in 2017/18 to 59 in 2018/19.
- 12.9 The items declared by Members related almost exclusively to hospitality and attendance at events. Members of the Executive declared 24 individual items, the Chairman and Vice Chairman of Council declared 27 individual items, and the

remaining 8 items related to declarations made by 5 other members. This may signify that gifts and hospitality are still not being declared on a uniform basis.

12.10 A copy of the register detailing Gifts and Hospitality declared by Officers for 2018/19 is attached at Appendix E to this report. Officers recorded a total of 79 declarations of gifts & hospitality, which can be broken down by directorate as follows:

- Communities – 28 (3 refused)
- Economy & Environment – 31 (4 refused)
- Resources – 20 (3 refused)

12.11 The types of matters recorded in the Register of Gifts & Hospitality varies significantly. Of the items declared that included an estimate of value, these ranged from between £2 and £300.

12.12 There was a significant variance in the value of gifts being rejected which ranged from £6 for a bacon sandwich to £300 for a rugby match at Twickenham.

12.13 The total number of declarations made by officers has increased by 15 from the total of 64 declared during 2017/18. This is not considered to be a significant number and may have resulted from increased awareness of the need to report.

12.14 What is evident however is that officers are still accepting gifts in circumstances where they should have been rejected. This matter has been raised with Heads of Service to ensure that officers are aware of the rules regarding gifts and hospitality.

13. The Committee on Standards in Public Life

13.1 The Committee on Standards in Public Life published its report and recommendations on ethical standards in local government on the 30 January 2019 following a year-long review and wide consultation. Key recommendations include:

- a new power for local authorities to suspend councillors without allowances for up to six months
- revised rules on declaring interests, gifts and hospitality
- local authorities retain ownership of their own Codes of Conduct
- a right of appeal for suspended councillors to the Local Government Ombudsman
- a strengthened role for the Independent Person
- greater transparency about the number and nature of Code complaints.

13.2 The Governance and Ethics Committee will be asked to consider these recommendation and approve any changes which are required as a result of legislative changes.

14. Conclusion

14.1 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 2018/19 originated from the same instance or parish council, so the potential problems highlighted by the process is lower than the number of complaints received.

- 14.2 The number of complaints referred for investigation remains low and is relevant when considering the overall position.
- 14.3 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 Conduct. 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.
- 14.4 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.
- 14.5 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.

15. Consultation and Engagement

Andy Day, Andy Walker, Moira Fraser, Shiraz Sheikh, Leigh Hogan, Julie Gillhespey.

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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