

Monitoring Officer's Annual Report to the Governance and Ethics Committee – 2019/20

Committee considering report:	Council on 12 May 2020
Portfolio Member:	Councillor Howard Woollaston
Date Portfolio Member agreed report:	5 March 2020
Report Author:	Sarah Clarke
Forward Plan Ref:	C3687

1. Purpose of the Report

- 1.1 To provide an update on local and national issues relating to ethical standards and to bring to the attention of Members any complaints or other problems within West Berkshire.
- 1.2 To present the Annual Governance and Ethics Report to Full Council.

2. Recommendations

- 2.1 Members are requested to note the content of the report.
- 2.2 The report to be circulated to all Parish/Town Councils in the District for information.

3. Implications and Impact Assessment

Implication	Commentary
Financial:	There are no financial issues arising from this report. However the costs associated with external investigations may lead to a budget pressure.
Human Resource:	There are no personnel issues associated with this report.
Legal:	There are no legal issues arising from this report. The matters covered by this report are generally requirements of the Local Government Act 2000 in so far as appropriate and the Localism Act 2011 and its supporting regulations.
Risk Management:	The benefits of this process are the maintenance of the Council's credibility and good governance by a high standard of ethical behaviour. The threats are the loss of credibility of the Council if standards fall. Adherence to the requirements of the Code of Conduct also reduce the risk of the Council's decisions being subject to legal challenge.
Property:	There are no property issues associated with this report.
Policy:	Revised policy and changes to processes adopted at Council in May 2012 and reviewed in December 2013 and September

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	2016.			
	Positive	Neutral	Negative	Commentary
Equalities Impact:				
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		
Environmental Impact:		X		
Health Impact:		X		
ICT or Digital Services Impact:		X		
Council Strategy Priorities or Business as Usual:		X		Business as usual.
Data Impact:		X		.
Consultation and Engagement:	Finance & Governance Group			

4. Executive Summary

- 4.1 This report is the Monitoring Officer's annual report for the Governance and Ethics Committee, which will be presented to Full Council at the Annual meeting. The report will also be circulated to all Town and Parish Councils.

4.2 The key findings identified in the report are:

- (a) Standards of ethical conduct across the district remain good.
- (b) The number of gifts and hospitality declared by Members appears to be low. The number of gifts declared by directorate also appears to vary considerably.

5. Supporting Information

Introduction

- 5.1 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.
- 5.2 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.
- 5.3 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.

Background

Governance Arrangements

- 5.4 During the Municipal Year 2019/20, the Governance and Ethics Committee was comprised of eleven members (nine District Councillors appointed on a proportional basis and two co-opted non-voting Parish/Town Councillors). The membership for 2020/21 will be agreed at the Annual Council meeting.
- 5.5 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 ten Members: two from the Conservative Party, two from the Liberal Democrat party, two from the Green Party, two parish/town councillors and two independent persons. The membership for 2020/21 will be agreed at the Annual Council meeting.
- 5.6 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;
 - Dispositions procedure;
 - Social Media Protocol.

Independent Persons

- 5.7 Under Section 28 of the Localism Act 2011 the Council has a duty to ensure that it has appointed at least one Independent Person who is consulted before it makes a decision on an allegation it has determined to investigate. 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.
- 5.8 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.
- 5.9 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.
- 5.10 James Rees, Mike Wall and Lindsey Appleton were appointed as the Council's Independent Persons for the 2019/20 Municipal Year. All three Independent Persons have agreed to remain as Independent Persons for the 2020/21 Municipal Year.
- 5.11 The Council is asked to recognise the significant contribution of the Independent Persons and thank them for their ongoing contributions.

Governance and Ethics Committee

- 5.12 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.
- 5.13 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).

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5.14 At the conclusion of 2019/20 the Governance and Ethics Committee comprised the following Members:

Conservative Group (5 Members)	Jeff Beck (<i>Chairman</i>), James Cole, Tony Linden, Tom Marino, Jo Stewart
Conservative Substitutes (2 Members)	Claire Rowles, Garth Simpson
Liberal Democrat Group (3 Members)	Jeremy Cottam (<i>Vice Chairman</i>), Geoff Mayes, Andy Moore
Liberal Democrat Substitutes (2 Members)	Adrian Abbs, Lee Dillon
Green Party Group (1 Member)	David Marsh
Green Party Substitutes (2 Members)	Carolyn Culver, Steve Masters

5.15 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.

5.16 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. Two substitutes non-voting parish councillors are also appointed to this Committee. During 2019/20 the Governance and Ethics Committee included the following Parish Councillors:

- Barry Dickens (co-opted non-voting Parish Councillor)
- Jane Langford (co-opted non-voting Parish Councillor)
- Lourdes Cottam (substitute co-opted non-voting Parish Councillor)
- Roger Hunneman (substitute co-opted non-voting Parish Councillor)

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

Advisory Panel

5.18 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. The views of the Advisory Panel are reported to the Governance and Ethics Committee, which makes the formal decision in respect of any allegations which have been investigated where it is considered that a breach of the relevant code of conduct has occurred.

5.19 The District Councillors on the Advisory Panel were representatives of all three political groups within the Council and are not appointed in accordance with the proportionality rules. During 2019/20 the Advisory Panel comprised the following District Councillors:

Conservative Group (2 Members)	Alan Law, Dennis Benneyworth
Liberal Democrats (2 Members)	Owen Jeffery, Phil Barnett

5.20 During the 2019/20 Municipal Year the following Parish Councillors were appointed to the Advisory Panel:

- Tony Renouf
- Simon Pike
- Elizabeth O' Keefe
- David Southgate

5.21 The Council is asked to thank the Parish Councillors for agreeing to be members of the Panel albeit that it has not had t meet during the 2019/20 financial year.

The Monitoring Officer

5.22 The Monitoring Officer is a statutory post and in West Berkshire rests with the Service Director Strategy & Governance. The Monitoring Officer (Sarah Clarke) in 2019/20 was supported by three deputies (Leigh Hogan, Shiraz Sheikh and Moira Fraser). The Monitoring Officer has a key role in promoting and maintaining standards of conduct. The Monitoring Officer also has a statutory responsibility to establish and maintain a register of interests for members and co-opted members of the authority. The Monitoring Officer acts as legal adviser to the Governance and Ethics Committee and Advisory Panel.

5.23 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' 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 breaches 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

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- advising on vires issues and maladministration, and in consultation with the Section 151 Officer financial impropriety, probity, and budget and policy issues to all Members.

The Work of the Committee 2019 – 2020

5.24 During the 2019/20 Municipal Year the work undertaken by the Committee included:

- Consideration of the monitoring cycle for both internal and external audit.
- The Committee signed off the 2018/19 Financial Statements including the Annual Governance Statements and the final audit letter from the external auditors Grant Thornton.
- The Committee Considered Reports from Internal Audit on the work being undertaken by the Team.
- A task group has been formed to oversee and control the review of the Council's Constitution.

5.25 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 would remain in place until May 2023. No other dispensations were granted during this period.

Register of Interests

5.26 Following the election in May 2019 all elected Members of West Berkshire Council completed and submitted their Register of Interest forms. These forms have been published on the Council's website. District Councillors are reminded to review their interests on a regular basis and to notify the Democratic and Electoral Services Manager of any amendments. 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.

Local Assessment of Complaints

5.27 Quarter 1 – 2019/20

During this period one complaint (NPC1/19) was received by the Monitoring Officer. This complaint pertained to a parish councillor and was later withdrawn pending the outcome of other investigations.

5.28 Quarter 2 – 2019/20

During this period five complaints were received by the Monitoring Officer. All five pertained to District Councillors. Following the initial assessments of complaints NDC2/19, NDC3/19, NDC4/19 and NDC5/19 it was determined that no further actions should be taken on these complaints. Following the initial assessment of complaint NDC1/19 it was agreed that informal resolution would be the most effective way to deal with the complaint and that has been resolved in the manner suggested.

5.29 Quarter 3 - 2019/20

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Three complaints were received during the third quarter of 2019/20. All three complaints NDC6/19, NDC7/19 and NDC8/19 were complaints about District Councillors. Complaint NDC8/19 was withdrawn by the Monitoring Officer, and no further action was taken on complaint NDC7/19 following the initial assessment of the complaint. Informal resolution was sought in respect of NDC6/19.

5.30 Quarter 4 - 2019/20

Five complaints have been received in during the final quarter of the year. Four of these complaints (NPC1/20, NPC2/20, NPC3/20 and NPC4/20) pertained to Parish Councillors and one pertained to a District Councillor. No further action was taken in respect of complaints NPC1/20 and NDC1/20. The other three complaints are still being processed.

Year on Year Comparison of Complaints

5.31 Table 1 – The Number of District and Parish Council Complaints received 2015/16 – 2019/20

Table 1	15/16	16/17	17/18	18/19	19/20
District Councillors	16	0	1	1	9
Parish Councillors	10	3	15	20	5
Co-Optees	0	0	0	1	0
Total	26	3	16	22	14

5.32 The number of complaints in 2019/20 represents a decrease in the number of complaints over the past two years but is just above the ten year average of thirteen complaints per annum. There were more complaints about District Councillors than there had been in the preceding four years.

5.33 Table 2 - Action Taken on Complaints received 2010/11 to 2018/19.

	15/16	16/17	17/18	18/19	19/20
No Further Action	21	1	13	14	7
Other Action	2	1	0	2	2
Investigation	1	1	1	2	0
Withdrawn/not progressed	2	0	2	4	2
Outcome Awaited	0	0	0	0	3

Total	26	3	16	22	14
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- 5.34 Table 2 shows that, in respect of the complaints received to date during 2019/20 which have been assessed, in the majority of cases the complaint was either withdrawn or no further action was taken. To date, no complaints have been referred for investigation this Municipal Year. Two cases were resolved by some other form of action or informal resolution, which is similar to the previous year.

Learning Points Arising from Complaints

- 5.35 There has been a significant reduction in the number of complaints against Town and Parish Councillors, which is to be welcomed. It is also of note that of the 5 received to date, 3 relate to the same incident.
- 5.36 There has also however been a significant rise in the number of complaints against District Councillors, which is significantly higher than it has been for the past 4 years. This is in my opinion, reflective of the large cohort of new members that were elected to the Council following the local elections which took place in May 2019. This view appears to be supported by the fact that there was a similar spike in complaints against District Councillors during 2015/16, when local elections also took place.
- 5.37 There was a fairly intensive member induction process with training being provided on a number of issues following the elections. The increase in complaints may however indicate a need to provide more tailored support for new members following local elections.
- 5.38 A Member Development Session, which was due to be held on 25 March 2020, will be rescheduled, as early as possible in the new Municipal Year and it will aim to provide practical advice regarding process and expected conduct at meetings.

Gifts and Hospitality

- 5.39 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).
- 5.40 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.
- 5.41 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.
- 5.42 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.
- 5.43 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

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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.

5.44 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.

5.45 There were 64 declarations of hospitality received by Members during the year. This is similar to the number of declarations made in the previous year (total of 59).

5.46 There were 72 declarations of gifts or hospitality received by officers during 2019/20, which is a reduction from 81 in the previous year.

5.47 The number of gifts or hospitality received by each directorate, and the number refused can be summarised as follows:

Directorate	Number of Declarations	Number refused
People	16	0
Place	30	5
Resources	26	4

5.48 It is of note that the largest directorate establishment wise, i.e. People, has recorded significantly less gifts and hospitality than the others.

6. Proposals

6.1 Members are asked to note the content of the report.

6.2 It is proposed that this report also be circulated to all Town and Parish Councils for information.

7. Other options considered

7.1 Not to produce the report. There is no legal obligation to produce this report, so not doing so would be an option. However, it is considered that an annual report provides a good overview of work being undertaken, and may assist in identifying any significant problems or developing trends. This overview is also helpful in ensuring full transparency regarding complaints. Not producing this report is therefore not recommended as an option.

8. Conclusion

8.1 Overall, Members in West Berkshire maintain high standards of ethical conduct, which is to be applauded. This is demonstrated by the relatively low number of complaints. It is of note that to date, no complaints have been referred for investigation during 2019/20.

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8.2 The number of Declarations of Gifts and Hospitality from Members has increased slightly since last year, despite the reduction in the number of Members of West Berkshire Council. There appears however to be some inconsistencies in declarations being made, including gifts being declared which are below the threshold detailed in the Constitution. There also appears to be a disparity in the number of items being declared by officers at a directorate level. The Monitoring Officer will therefore re-inforce the message regarding the need to record offers of gifts and hospitality, regardless of whether they are accepted.

9. Appendices

None

Background Papers:

None

Subject to Call-In:

Yes: ☐ No: ☒

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



Wards affected: All

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