

Monitoring Officer's Annual Report to the Governance and Ethics Committee – 2020/21

Committee considering report:	Council on 4 May 2021
Portfolio Member:	Councillor Howard Woollaston
Date Portfolio Member agreed report:	8 April 2021
Report Author:	Sarah Clarke
Forward Plan Ref:	C3992

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.

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Policy:	Revised policy and changes to processes adopted at Council in May 2012 and reviewed in December 2013 and September 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 was significantly reduced during 2020/21, but this is likely to reflect the fact that the country has spent a significant part of the previous 12 months operating with restrictions imposed in response to the Covid 19 pandemic.

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.

Background

Governance Arrangements

- 5.4 During the Municipal Year 2020/21 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 2021/22 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 2021/22 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;
- Dispensations 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 2020/21 Municipal Year. All three Independent Persons have agreed to remain as Independent Persons for the 2021/22 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

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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 the Constitution (Part 2 Articles of the Constitution).

5.14 At the conclusion of 2020/21 the Governance and Ethics Committee comprised the following Members:

Conservative Group (5 Members)	Jeff Beck (Chairman), Rick Jones, Tony Linden, Tom Marino, Claire Rowles
Conservative Substitutes (2 Members)	James Cole, Garth Simpson
Liberal Democrat Group (3 Members)	Jeremy Cottam (Vice-Chairman), Geoff Mayes, Andy Moore
Liberal Democrat Substitutes (2 Members)	Adrian Abbs, Owen Jeffery
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 substitute non-voting parish councillors are also appointed to this Committee. During 2020/21 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.

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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 2020/21 the Advisory Panel comprised the following District Councillors:

Conservative Group (2 Members)	Dennis Benneyworth, Alan Law
Liberal Democrats (2 Members)	Phil Barnett, Lee Dillon
Green Party Group (2 Members)	Carolyne Culver, Steve Masters

5.20 During the 2020/21 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 to meet during the 2020/21 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 2020/21 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 Committee for Standards in Public Life wrote, via the LGA, to local authorities requesting a progress report against the 15 best practice recommendations regarding local government Ethical Standards, which highlighted that West Berkshire Council already complies with most of the recommendations. There were some areas where the Council will need to review existing processes and procedures, which will be considered by the Constitution Review Task Group at the relevant time. The areas for review include matters such as the recommendation that Members be required to comply with formal standards investigations, and a recommendation that the Code of Conduct be reviewed on an annual basis.

The Work of the Committee 2020 – 2021

5.24 During the 2020/21 Municipal Year the work undertaken by the Committee has to date included:

- Consideration of the monitoring cycle for both internal and external audit.
- The Committee Considered Reports from Internal Audit on the work being undertaken by the Team.
- The Committee considered a report into the findings of a review of the effectiveness of the Governance and Ethics Committee and an action plan was

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developed to meet the recommendations of the review. An updated Terms of Reference for the Committee was agreed, which will be considered by Council.

- The Constitution Review Task Group has continued to meet. This project was delayed due to Covid, but regular meetings are again taking place and progress is being made.

5.25 The Monitoring Officer, under delegated authority, granted a dispensation to all West Berkshire Councillors in 2019 to speak and vote on any items pertaining to Council Tax. This dispensation will remain in place until May 2023. No other dispensations were requested during the past year.

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 Services Manager of any amendments.

5.27 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

5.28 Quarter 1 – 2020/21

During this period eight complaints were received and processed by the Monitoring Officer. Five of these complaints (NDC1/20, NDC2/20, NDC3/20, NDC4/20 and NDC6/20) pertained to District Councillors. Following the initial assessment it was agreed that no further action should be taken on any of the complaints. There were three complaints (NPC2/20, NPC3/20 and NPC4/20) submitted about parish councillors. The complainants had all requested that their identity remain confidential. These requests were assessed and anonymity was not granted. The complainants therefore decided that they would withdraw their complaints.

5.29 Quarter 2 – 2020/21

During this period twelve complaints were received by the Monitoring Officer. There was one complaint about a District Councillor (NDC5/20) which the Panel determined required no further action. Eleven complaints were received about parish councillors. Complaints NPC6/20 and NPC11/20 were both withdrawn by the complainant before being considered by the Panel. No further action was taken on complaints NPC5/20, NPC8/20, NPC10/20, NPC12/20, NPC13/20, NPC14/20 and NPC15/20. The Panel determined that in the cases of NPC7/20 and NPC9/20 a potential breach of the relevant Code of Conduct might have occurred and that the relevant councillors should be asked to undertake training to address the issues arising from the complaint.

5.30 Quarter 3 - 2020/21

Six complaints were received during the third quarter of 2020/21. In respect of the complaint against a district councillor (NDC7/20) the complainant decided after making the complaint that they did not wish to pursue the complaint. No further action was

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taken on the five complaints (NPC16/20, NPC17/20, NPC18/20, NPC19/20 and NPC20/20) about parish councillors.

5.31 Quarter 4 - 2020/21

Seven complaints have been received in the final quarter of the year. Five of these complaints pertained to District Councillors and two pertained to Parish Councillors. No further action was taken in respect of complaints NDC8/20, NDC9/20 and NDC10/20. Complaints NDC11/20, NPC21/20 and NPC22/20 are due to be considered in April. The complainant in respect of NDC12/20 had requested that their identity be kept confidential. As anonymity was not granted this complaint has been withdrawn

Year on Year Comparison of Complaints

5.32 Table 1 – The Number of District and Parish Council Complaints received 2016/17 – 2020/21

Table 1	16/17	17/18	18/19	19/20	20/21
District Councillors	0	1	1	9	12
Parish Councillors	3	15	20	5	21
Co-Optees	0	0	1	0	0
Total	3	16	22	14	33

5.33 The number of complaints in 2020/21 represents a significant increase in the number of complaints, although it must be noted that 16 of these were connected to the same issues at a single Parish Council.

5.34 Table 2 - Action Taken on Complaints received 2016/17 to 2020/21.

	16/17	17/18	18/19	19/20	20/21
Withdrawn/not progressed	0	2	4	2	7
No Further Action	1	13	14	7	21
Other Action	1	0	2	2	2
Investigation	1	1	2	0	0
Outcome Awaited	0	0	0	3	3
Total	3	16	22	14	33

- 5.35 Table 2 shows that, in respect of the complaints received to date during 2020/21 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 the same as the previous year.
- 5.36 There has been an increase in requests for anonymity received over the past year. The process by which the Council will consider requests for confidentiality by complainants is set out in the Procedure for the Local Determination of Allegations at Appendix E of Part 13 of the Constitution. This makes clear that anonymity will only be granted in exceptional circumstances.

Learning Points Arising from Complaints

- 5.37 There has been a significant increase in the number of complaints in the past year. However, it is of note in that context that 21 resulted in no further action, 2 resulted in 'other' action, and it is important to note that to date, none of those which have been considered have been referred for investigation.
- 5.38 The other actions related to a request for training, and that the Monitoring Officer write to the Leaders regarding Social Media Use. Those e-mails were issued on the 17th March 2021.
- 5.39 Member Development Sessions have taken place remotely during the past year, and the programme for the next year will incorporate social media training.

Gifts and Hospitality

- 5.40 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).
- 5.41 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.
- 5.42 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.
- 5.43 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.
- 5.44 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.

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- 5.45 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.
- 5.46 During 2020/21, the Council secured a number of external training sessions for senior officers, which included training on the Bribery Act.
- 5.47 There were no declarations of hospitality received by Members during the year 2020/21. This is no doubt reflective of the fact that we have been operating remotely for the majority of the past year.
- 5.48 There was also a significant reduction in the number of gifts / hospitality declared by officers with 28 declarations made during 2020/21, which is a reduction from 72 in the previous year.
- 5.49 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	11	6
Place	13	4
Resources	4	2

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 Despite the significant rise in the number of complaints over the past year, it is considered that Members in West Berkshire continue to maintain high standards of ethical conduct, which is to be applauded. It is of note that to date, no complaints have been referred for investigation during 2020/21.
- 8.2 The number of Declarations of Gifts and Hospitality has decreased significantly, which is no doubt reflective of the restrictions imposed in response to Covid 19. The recommendation that the register of Gifts and Hospitality be published on a quarterly

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basis will no doubt assist to highlight the need to declare such matters on a regular and consistent manner.

- 8.3 Despite the challenges of the past year, the Governance and Ethics Committee has continued to operate and support the operation of key governance functions across the Council.

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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